TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]77

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, AND ALLUMAL HACKUMAL SUKHRANI, PETITIONERS,

vs.

THE INSULAR COLLECTOR OF CUSTOMS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

PETITION FOR CERTIORARI FILED MAY 8, 1922.
CERTIORARI AND RETURN FILED JANUARY 14, 1922.

(28,258)

(28,256)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 314

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, AND ALUMAL HACKUMAL SUKHRANI, PETITIONERS,

vs.

THE INSULAR COLLECTOR OF CUSTOMS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 9, 1921.

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1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 16139.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ and ALLUMAL HAKUMAL SULCHRAIN, Petitioners and Appellees,

versus

THE INSULAR COLLECTOR OF CUSTOMS, Respondent and Appellant.

For a Writ of Habeas Corpus.

(Appellate Jurisdiction.)

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case, to wit:

On October 25, 1919, the petitioners by their attorney filed with the office of the Clerk of the Court of First Instance of Manila, Ninth Judicial District, the following petition:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

2 No. 17628.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL SUKHRANI, Petitioners,

versus

INSULAR COLLECTOR OF CUSTOMS, Respondent.

Petition for a Writ of Habeas Corpus.

The petitioners allege:

1. That they are unlawfully detained and deprived of their liberty by the respondent, the Insular Collector of Customs, at the Custom House in the City of Manila.

2. That such detention and deprivation of liberty is not under or by virtue of any warrant of arrest, order of commitment, or other judicial writ or process whatsoever.

3. That the said detention and deprivation of liberty is illegal and the illegality thereof as well as the cause or excuse therefore are as hereinafter stated.

4. That the petitioners arrived at Manila on the S. S. "Tango Maru," on September 26, 1919, and were brought before a Board of Special Inquiry at the Manila Custom House for examination of their right to enter.

5. That the board abused the power and discretion in them vested by holding and declaring that the petitioners being industrial partners in a merchantile concern were not merchants and hence were members of an excluded class, to wit, British Indians.

6. That from this adverse decision an appeal was duly perfected to the Insular Collector who affirmed the decision of the board
3 and is not holding the petitioners for the purpose of deportation.

7. That the proceedings of the Immigration officers at Manila were as set forth in Exhibit "A" hereto attached and made a part of this petition.

Wherefore, the petitioners pray that a writ of Habeas Corpus issue, returnable before this Court at a time to be fixed in said writ; that after due hearing your petitioners be granted their liberty; that they have and recover their costs in this action and that they be granted such other relief as to the Court may seem equitable and just.

Respectfully submitted,

HARTFORD BEAUMONT,
Attorney for Petitioners.

127 Escolta, Manila.

Manila, October 25, 1919.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

H. Bulchand, being first duly sworn upon oath deposes and says: That he has been informed of the contents of the foregoing petition; that he is familiar with the facts therein referred to, and that the allegations contained in said petition are true to the best of his knowledge and belief.

H. BULCHAND.

Subscribed and sworn to before me this 25th day of October, 1919, affiant exhibiting his cedula No. F-2773, issued at Manila
4 on the 2nd day of January, 1919.

[SEAL.] HARTFORD BEAUMONT,
Notary Public.

My commission expires December 31, 1920.

Reg. 207, Page 57.

Let the writ issue as prayed for returnable before this Court at 11:00 A. M. on the 1st day of November, 1919.

S. DEL ROSARIO,
Judge.

EXHIBIT "A."

(On the margin of each and every sheet of this exhibit is sealed—Philippine Customs Service—Manila.)

Insular Collector of Customs, Manila.

Certificate No. 8139.

In the Matter of NARAINDAS LEKHRAJ, ALLUMAL HAKUMAL Sukhrain, and Dharandas Tulsidas, Alien Immigrants ex the S. S. Tango Maru, September 26, 1919, Port of Manila.

Decision of Appeal.

This case coming on regularly for review upon an appeal filed by Mr. Hartford Beaumont, Attorney-at-Law, on behalf of the above-mentioned immigrants, and after examining the evidence presented before the Board of Special Inquiry, sitting at the port of Manila, and considering all the facts and circumstances of the case, together with the arguments offered by counsel, and being fully advised in the premises, it is adjudged and decided by the undersigned that said appeal be overruled and denied, the decision of the Board of Special Inquiry that these immigrants are not entitled to admission into the Philippine Islands in that they are natives of India and fail to show that they belong to any of the exempt classes under the provisions of section 3 of the Immigration Act of February 5, 1917, appearing reasonable and proper in view of the showing made. The above-mentioned immigrants are, therefore, refused landing, and it is hereby ordered that they be returned to their port of embarkation in accordance with law.

Dated at Manila, P. I., October 20, 1919.

V. ALDANESE,
Insular Collector of Customs.

The Government of the Philippine Islands,

Department of Finance,

Bureau of Customs,

Board of Special Inquiry.

1*st Indorsement.*

Oct. 17, 1919.

I. B. R. No. 755-3.

The within papers, relative to the rejection of Dharamdas Tulsidas, the detained East Indian immigrant, are respectfully submitted

through the Chief of the Immigration Division, to the Insular Collector of Customs on appeal.

The facts in the case together with reasons for adverse decision, are fully stated in the attached record.

JUAN ALCAZAREN,
Chairman of the Board.

2nd Indorsement.

Oct. 17, 1919.

Respectfully forwarded to the Insular Collector of Customs.
CHIEF IMMIGRATION DIVISION.

6 M-151.

The Government of the Philippine Islands,

Department of Finance,

Bureau of Customs,

Manila.

October 17, 1919.

Board of Special Inquiry No. 755-3.

Whereas, the S. S. "Tango Maru" on the 26th day of September, 1919, brought to this port one alien Dharamdas Tulsidas of whom was duly detained by the examining immigrant inspectors for examination in relation to their right to admission into the Philippine Islands by a board of special inquiry;

Now therefore, by virtue of the authority vested in me by law, I hereby appoint the following Board of Special Inquiry of three members, who have been selected from officials of the Bureau of Customs duly designated as qualified to serve on such boards at the port of Manila, to determine in accordance with law whether said aliens shall be allowed to land or shall be deported, namely:

Detail for the Board:

1. J. Alcazaren, Chairman.
2. S. Constantino, Member.
3. M. P. Salvacion, Member.

INSULAR COLLECTOR OF CUSTOMS.

The Government of the Philippine Islands,

Department of Finance,

Bureau of Customs,

Board of Special Inquiry.

I. B. R. No. 755.

Case No. 3.

PROCEEDINGS OF THE BOARD OF SPECIAL INQUIRY, AT THE PORT OF MANILA, APPOINTED BY THE INSULAR COLLECTOR OF CUSTOMS OCTOBER 1, 1919, TO DETERMINE, IN ACCORDANCE WITH LAW, THE RIGHT OF AN ALIEN EX THE S. S. "TANGO MARU," SEPTEMBER 26, 1919, TO LAND IN THE PHILIPPINE ISLANDS.

Board Session of October 1, 1919.

Examination of Dharamdas Tulsidas, Male, Age 19.

Present: Messrs. Alcazaren, Constantino and Salvacion, Members of the Board; the detained; (no representative).

DHARAMDAS TULSIDAS is called.

Questions by Chairman Alcazaren:

NOTE.—He is duly sworn.

Q. What is your name?
A. Dharamdas Tulsidas.
Q. How old are you?
A. 19.
Q. What is your occupation?
A. Merchant.
Q. What is your nationality?
A. British Indian subject.
Q. Of what race is your father?
A. Indo race.
Q. And your mother?
A. Same.
Q. Where do you come from?
A. Hydarbadsen.
Q. Do you have any business of your own in India?
A. No.
Q. Have you any business of your own in the Philippines?
A. No, not of my own.
Q. Who gave you this passport?
A. The British Government.

Q. What did you tell the British official giving you this passport your occupation to be?

A. Salesman.

Q. Do you find any difference between salesman and merchant?

A. In India there is no difference between them.

Q. Do you mean to say that a salesman in India has a business of his own?

A. Yes, there are plenty of salesmen in India having business of their own.

Q. Do you mean to say that some salesmen do not have business?

A. Yes, they have business of their own.

Q. You said a moment ago that you have no business in the Philippines?

A. Yes, I do.

Q. What are you coming here for?

A. I am coming as a partner of Wasumul and Asumul store.

Q. How much would you get in Wasumul and Asumul?

A. I will get a part of the profit.

Q. What will be the nature of your work in Wasumul and Asumul?

A. Partner and salesman.

Q. Are you going to be a manager?

A. No.

8 Q. As a partner you said you would get a share of the profits?

A. Yes, part of the profits.

Q. As a salesman how much would you get a month?

A. Nothing.

Q. Have you been in the Philippines before?

A. No.

Q. Who paid your fare when you came to the Philippine Islands?

A. The company (Wasumul and Asumul) paid for my transportation.

Q. Who paid your other expenses besides transportation expenses?

A. All paid by the company.

Q. How long have you had connection with the firm of Wasumul and Asumul?

A. I was a partner of this firm already in India.

Q. When?

A. In 1915.

Q. How long have you been connected with the firm of Wasumul and Asumul in Manila?

A. From first of January this year 1919.

Q. But your partnership agreement is dated Sept. 19, 1919?

Q. But the agreement says that it takes effect Jan. 1, 1919. (par. 4 Agreement.)

Q. Do you have anything to show that you are connected with the firm of Wasumul and Asumul?

—. Yes.

NOTE.—He presents a partnership agreement made at Hong Kong. Sept. 19, 1919, duly acknowledged by the American Consul of

Hong Kong Sept. 20, 1919. He also presents passport No. 902 issued by the Commissioner in Siend dated at Karachi, April 12, 1919, showing the occupation of the applicant to be that of a Salesman.

Q. Do you have any more to say about your claims?
A. No more.

Decision.

Dharamdas Tulsidas is an East Indian coming from foreign parts. He seeks admission into the Philippine Islands as merchant. It appears that he has no business in India. It appears further that he has no business of his own in the Philippines. His passport No. 902 issued by the Commissioner in Siend, dated at Karachi, April 12, 1919, shows that he is a salesman. In his declaration duly acknowledged before the American Consul at Madras, India, he states that his employer is Wassiamull Assomull & Co. It is clear that he is not a merchant within the meaning of Immigration Law and therefore, not an exempt to the entitled to landing. He is, therefore, refused landing in the Philippines.

He is informed of this decision and is further informed that he will have two days within which to appeal to the Insular Collector of Customs, should be feel dissatisfied therewith. He is further informed that in case of deportation, he will be returned to the place whence he came from by the steamship company which brought him here, and at no further expense to himself.

JUAN ALCAZAREN,
Chairman of the Board.
S. CONSTANTINO,
Member of the Board.
M. N. SALVACIÓN,
Member and Stenographer.

A true copy.
D. A.

Manila, P. I., October 24, 1919.

I hereby certify that the foregoing document, consisting of 5 pages, is a full, true and correct copy of the original on file in the Manila Customhouse, of which original I am the legal custodian.

V. ALDANESE,
Insular Collector of Customs.

(Canceled 20¢ I. R. Documentary Stamp and Customs Service Documentary Stamps amounting to ₱3.50.)

9 EXHIBIT "A."

Insular Collector of Customs—Manila.

Certificate No. 8141.

In the Matter of NARAINDAS LEKHRAJ, ALLUMAL HAKUMAL SUKHrain, and Dharemdas Tulsidas, Alien Immigrants ex the S. S. Tango Maru September 26, 1919, Port of Manila.

Decision on Appeal.

This case coming on regularly for review upon an appeal filed by Mr. Hartford Beaumont, Attorney-at-Law, on behalf of the above-mentioned immigrants, and after examining the evidence presented before the Board of Special Inquiry, sitting at the port of Manila, and considering all the facts and circumstances of the case, together with the arguments offered by counsel, and being fully advised in the premises, it is adjudged and decided by the undersigned that said appeal be overruled and denied, the decision of the Board of Special Inquiry that these immigrants are not entitled to admission into the Philippine Islands in that they are natives of India and fail to show that they belong to any of the exempt classes under the provisions of section 3 of the Immigration Act of February 5, 1917, appearing reasonable and proper in view of the showing made.

The above-mentioned immigrants are, therefore, refused landing, and it is hereby ordered that they be returned to their port of embarkation in accordance with law.

Dated at Manila, P. I., October 20, 1919.

V. ALDANESE,
Insular Collector of Customs.

10 The Government of the Philippine Islands,

Department of Finance,

Bureau of Customs,

Board of Special Inquiry.

1*st Indorsement.*

Oct. 17, 1919.

I. B. R. No. 755—1 & 2.

The within papers, relative to the rejection of Naraindas Lekhraj and Allumal Hakumal Sukhrain, the detained East Indians immigrants, are respectfully submitted through the Chief of the Immigra- Division, to the Insular Collector of Customs on appeal.

The facts in the case together with reasons for adverse decision, are fully stated in the attached record.

JUAN ALCAZAREN,
Chairman of the Board.

2nd Indorsement.

Immigration Division.

Oct. 17, 1919.

Respectfully forwarded to the Insular Collector of Customs.

CHIEF IMMIGRATION DIVISION.

11 M—151.

The Government of the Philippine Islands,

Department of Finance,

Bureau of Customs.

Manila.

October 17, 1919.

Board of Special Inquiry No. 755—1 & 2.

Whereas, the s/s "Tango Maru" on the 26th day of September 1919, brought to this port two aliens, Naraindas Lekharaj and Allumal Hakumal Sukhrain of whom were duly detained by the examining immigrant inspectors for examination in relation to their right to admission into the Philippine Islands by a board of special inquiry;

Now, therefore, by virtue of the authority vested in me by law, I hereby appoint the following Board of Special Inquiry of three members, who have been selected from officials of the Bureau of Customs duly designated as qualified to serve on such boards at the port of Manila, to determine in accordance with law whether said aliens shall be allowed to land or shall be deported, namely:

Detail for the Board:

Juan Alcazaren, Chairman.

V. Cosico, Member.

M. P. Salvacion, Member.

INSULAR COLLECTOR OF CUSTOMS.

12 The Government of the Philippine Islands.

Department of Finance,

Bureau of Customs.

Board of Special Inquiry.

I. B. R. No. 755.

Case- Nos. 1, 2.

PROCEEDINGS OF THE BOARD OF SPECIAL INQUIRY, AT THE PORT OF MANILA, APPOINTED BY THE INSULAR COLLECTOR OF CUSTOMS SEPTEMBER 30, 1919, TO DETERMINE, IN ACCORDANCE WITH LAW THE RIGHT OF TWO ALIENS EX S. S. "TANGU MARU SEPT. 26, 1919, TO LAND IN THE PHILIPPINE ISLANDS.

Board Session of September 30, 1919.

Examination of Naraindas Lekhraj, male; age 46; *Allumal Hakumal Sukhrain, male; age* 26.

Present: Messrs. Alcazaren, Cosico and Salvacion, Members of the Board; the detained; No Representative; Mr. J. Gangaran, interpreter.

NOTE.—The interpreter is duly sworn.

Naraindas Lekhraj is called.

Questions by Chairman Alcazaren:

NOTE.—He is duly sworn.

Q. What is your name?
—. Naraindas Lekhraj.
Q. How old are you?
A. 45.
Q. What is your occupation?
A. Merchant.
Q. Where were you born?
A. Hydrobal.
Q. Of what nationality is your mother?
A. Indo.
Q. Of what nationality is your father?
A. The same.
Q. Have you been in the Philippines before?
A. About 19 or 20 years ago yes.
Q. How long did you stay here?
A. Nineteen years.
Q. When did you leave the Philippines for the last time?
A. Dec. 1915.

Q. And from December 1915 up to the time that you came you were in India?
A. Yes.
Q. Do you have any business in Manila or not?
A. Yes.
Q. Where is that?
A. Asumul partner.
Q. How much money have you invested in that business?
A. No money.
Q. You said a moment ago that you did not put — money, did you not?
A. Yes, that is correct.
Q. Because you did not put any money in the business of Wasumul and Asumul you do have any interest in that store now?
A. No money.
Q. What is your connection in that store of Wasumul and Asumul?
A. Industrial partner from 1909 to the present.
Q. Do you mean to say that you could continue to be an industrial partner during your absence?
A. Yes.
13 Q. Do you understand what industrial partner is?
A. Yes.
Q. Is not an industrial partner that member of a firm who does not have any capital but simply works for the firm?
A. Yes that is the meaning.
Q. Knowing that to be the meaning, how could you continue to be an industrial partner while absent?
A. I only took a rest.
Q. What are you going to do in Wasumul and Asumul?
A. Manager.
Q. Who is the manager there now?
A. Jacomal Bochan.
Q. How can you be a manager since Jacomal Bochan is the manager?
A. He is going back to India and I will be in his place.
Q. Who is the owner of Wasumul and Asumul?
A. Wasumul and Asumul.
Q. Are they still living?
A. Dead.
Q. Who owns the store now?
A. The heirs.
Q. Name those heirs?
A. Watomal, Topandas Dalandas, Sambas, Gangaram.
Q. Did anyone of them signed this document?
A. Yes, Mr. Topandas.
Q. How many signed the agreement?
A. Only one.
Q. How about the four?
A. He was authorized and has the full power of attorney.
Q. Where is Topandas Wasumul?

A. He is here now.
Q. Where did he sign this document?
A. In Hong Kong.
Q. Where did all these persons sign*ed*?
A. In Hong Kong.
Q. Did they write this or somebody?
A. Themselves.
Q. And so your business interests are in Manila and not in Hederabadsen?
A. Here in Manila only.
Q. When you applied for this passport did the British Government ask you whether you have business in Hederabadsen?
A. No.
Q. Did the British Government ask you whether you have business in Manila?
A. Yes, sir.
Q. Is that sure?
A. Yes, sir.
Q. And are you sure that the British officials did not ask you whether you have business in Hederabadsen or not?
A. Yes, I am quite sure that he did not ask me.

NOTE.—He presents partners' agreement made at Hong Kong 19th day of September 1919, duly acknowledged by the American Consul at Hon- Kong September 20, 1919. He further presents passport No. 1079 issued at Manila by the Acting British Consul General on December 3, 1915.

Q. Have you anything more to say about your case?
A. No more.

ALLUMAL HAKUMAL SULCHRAIN is called.

Questions by Chairman Alcazaren:

NOTE.—He is duly sworn.

Q. What is your name?
A. Allumal Hakumal Sulchrain.
Q. How old are you?
A. 27.
Q. What is your occupation?
A. Silk merchant.
Q. Where are you a silk merchant?
A. Here in the P. I.
Q. Where is your business in the Philippines?
A. Bengal Bazaar, Escolta, Manila.
Q. Do you have a business in India?
A. No.
Q. Have you ever been in the Philippine Islands before?
A. Yes.
Q. When?
A. In 1916.

14 Q. How long did you stay here?
A. About three years.
Q. Do you mean to say that you returned to India only recently?
A. About 16 months ago.
Q. Do you mean to say that you — the Philippines in 1918?
A. Yes.
Q. Do you have that business in calle Rosario?
A. I was a partner of Wasumul and Asumul.
Q. When did you become a partner of Wasumul and Asumul?
A. In 1916.
Q. How much money did you put in that business?
A. No money.
Q. Why are you a partner then?
A. I am an industrial partner.
Q. How much salary do you get in Wasumul and Asumul?
A. We don't get salary.
Q. Who is the owner of this Wasumul and Asumul?
A. Two sons and some cousins.
Q. How many in all?
A. Five.
Q. With whom did you make the agreement?
A. Topandas, Wasumul, Watomul Samdas, Gangarang Tulumal
Q. That includes you?
A. No, sir.
Q. How many persons were in that agreement?
A. Eleven.
Q. Name them?
A. Narandas Lepras, Alumal, Kesontian, Gangarang, Darandash, Dumandas. (These include the first mentioned above.)
Q. What will you do in Wasumul and Asumul?
A. Will sell goods.
Q. What will you do in Wasumul and Asumul store?
A. Salesman.
Q. Not manager?
A. Yes, manager also.
Q. How much salary will you get as a merchant?
A. I do not get salary.
Q. Do you mean to say that you are a salesman?
A. I am selling the goods.
Q. Do you mean to say that you are a salesman?
A. Yes.
Q. Do you mean to say that you are also a manager?
A. Yes.
Q. Who is the manager of Wasumul and Asumul business?
A. Jacumal Bochan.
Q. How can you be a manager if he is here?
A. He is going home. I will become a manager.
Q. Are you manager now?
A. Yes, sir.
Q. But the present manager is still in Manila therefore two managers now?
A. We are three managers.

Q. How many managers now in Manila?
A. Four.
Q. How many more managers more out?
A. We are five here and three outside of the Philippine Islands.
Q. Why did you say a moment — that four managers only here?
A. Five are here and three in Hong Kong.
Q. Do you have anything to prove that you are a partner of Wasumul and Asumul?
A. Yes, sir.

NOTE.—He presents partners' agreement made at Hong Kong 19th day of September 1919, duly acknowledged by the American Consul at Hong Kong September 20, 1919.

Q. Did the British official *you* gave you this passport asked you whether or not you — a business in India?
A. No.
Q. Did that same official asked you whether or not you have business in the Philippines?
A. Yes.
Q. Why not asked you anything about your business connection in India?
A. I do not know.

NOTE.—He presents passport No. 826 issued by the Commissioner in Siend, dated at Karachi, the 20th day of March 1919.

Q. Do you have any more to say about your connection of Wasumul and Asumul?
A. No more.

15 *Decision.*

Naraindas Lekhraj and Allumal Hakumal Sukhrain are East Indians coming from foreign parts. They seek admission into the Philippine Islands as merchants. It appears that they do not have a business of their own. They claim to be partners of Wassiamull Assomull & Co., but in reality they are salesmen in that store. They claim to be industrial partners of Wassiamull Assomull & Co., but industrial partners are not merchants within the meaning of the Immigration Law. They are therefore refused landing in the Philippine Islands.

They are informed of this decision and are further informed that they will have two days within which to appeal to the Insular Collector of Customs, should they feel dissatisfied therewith. They are further informed that in case of deportation, they will be returned to the place whence they came from by the steamship company which brought them here, and at no further expense to themselves.

JUAN ALCAZAREN,
Chairman of the Board.
V. COSICO,
Member of the Board.
M. P. SALVACION,
Member and Stenographer.

D. A/.

Manila, P. I., October 24, 1919.

I hereby certify that the foregoing document consisting of 7 pages, is a full, true and correct copy of the original on file in the Manila Customhouse, of which original I am the legal custodian.

V. ALDANESE,
Insular Collector of Customs.

(Canceled 20¢ I. R. documentary stamp and customs service documentary stamps amounting to ₱4.10.)

16 *Partnership Agreement.*

This agreement made at Hong Kong, this nineteenth day of September, One thousand nine hundred and nineteen by and between Topandas Wassiamall of Hyderabad Sind, Merchant Watoomal Wassiamall, Shamdas Hiranand, Gangaram Tilokchand and Dhaloomal Nonoomal the members of the existing firm of "Wassiamall Assomall & Co." to be known as the capitalist partners, parties of the first part and Wassiamall Assomall, Naraindos Lekhaj, Allumal Hakumal, Kishinchand Dultram, Jhamandas Dewandas and Gagandas Rochiram and Dharmdas Tulsidas now residing at Hong Kong, to be known as industrial partners, parties of the second part,

Witnesseth:

That said parties have agreed, and by these presents do agree, to associate themselves as co-partners for the purpose of carrying on the business of buying and selling goods, wares, merchandise and commodities and such commission business as may appertain to the same, in the Philippine Islands to the faithfull performance of which they mutually bind and engage themselves each to the other, his executors and administrators:

1. That the principal place of business and domicile of this co-partnership shall be Manila; or at such other place as the business now conducted at said location may hereinafter be transferred by mutual consent, and this contract shall relate to this particular store and business only.

2. That the business of this co-partnership shall be conducted under the firm name of "Wassiamall Assomall & Co."

17 3. That the direction, control and management of this partnership is vested solely and exclusively in the parties of the first part, who are hereby granted full power and authority to appoint such manager or managers from the industrial partners as they may deem necessary or proper for the management of the store above mentioned.

4. That the existence of this co-partnership shall relate back to the 1st day of January, 1919, from which date the books thereof have been kept, and shall continue to exist until the 1st day of January, 1921, this partnership however shall be considered as existing for two

additional years from the latter date, if no partner shall serve notice on the other partners of his desire to retire from the copartnership at least sixty days before the or-ginal term of this agreement expires.

5. That the capital of this co-partnership is not less than One hundred thousand pesos, all of which has been contributed exclusively by the parties of the first part; additional capital necessary to conduct the firm's business shall be advanced by said parties of the first part as required; and all of the said capital so contributed or to be contributed by said parties of the first part shall remain the exclusive property of said parties.

6. The capitalist partners shall be entitled to interest at the rate of 6% (six per cent) on capital invested in the business.

7. That the right to use the firm name of this co-partnership shall exclusively vest in the parties of the first part and such managing partners as have been or shall in the future be appointed by said parties of the first part.

18 8. That the respective shares in the profits in the partnership business shall be as follows:

1. Wassiamall Assomall	54%
2. Naraindos Lekhrof	15%
3. Allumal Hokumal	10%
4. Kishinchand Doulatram	6%
5. Jhamandos Dewandas	5%
6. Gogandos Rochiram	5%
7. Dharmdas Tulsidas	5%
	100%

9. That the respective shares in the losses occur-ing to the partnership during its existence whether by fire, winds force majeur, and other accidents, or whether by loss of business of failure of collections shall be borne by all of the partners in proportion to their respective shares in the profits of the business.

10. The profits and losses of the partnership shall be distributed and all accounts settled in the City of Manila, each and every year, within two months from the date of the taking of the inventory, in January when feasable.

11. That at the end of year when the inventory is taken and the balance struck, credit accounts which are not collected within the period, shall not be counted as assets of the firm, but only those accounts which are collectable shall be so counted, according to the value of the goods which such collectable accounts represent, and not according to the price at which such goods were sold.

12. In determining the net profits and losses of the firm, there shall be deducted from the gross income the following:

1. The cost of all the goods which have been purchased for the purpose of sale.

2. Ten per cent (10%) per annum of the value of all the
19 furniture and fixtures to cover depreciation.

3. All ordinary and current expenses, light, heat, taxes, wages, insurance, food, barber, transportation, etc., etc., etc.

13. Each year upon the taking of the inventory a deduction of 5% of the book value i. e. invoiced value, of the goods on hand shall be made, to cover loss by reason of said sale goods becoming shop-worn, unreasonable, old, slow selling, or unsalable.

14. This partnership agreement may be terminated without any notice whatsoever, and a liquidation forthwith had, should either of the industrial partners be convicted of crime, be guilty of theft, embezzlement or abuse of the confidence reposed in them, or should they, or either of them, at any time fail to account at once, and correctly, for the firm funds coming into their hands, or should they develop a vicious and quarrelsome disposition sufficiently grave, in the opinion of the capitalist partners, to prejudice the interests of the co-partnership, or should they neglect to perform their duties as partners, or engage in any competing busines-, directly or indirectly, or communicate trade secrets to third parties.

15. That each of the industrial partners shall be entitled to vacation leave for nine months, but same shall not be taken oftener than once every two years. During such leave the industrial partners enjoying same, shall not be connected with any competitive concern in the Philippine Islands, whether directly or indirectly. Each industrial partner going on leave shall have permission to visit India, and if he return to the Philippine Islands at the expiration of said leave, for the purpose of resuming his place in the business, and
20 shall actually so resume in good faith, he shall have credit in his account for all expenses of his trip to and from India, not to exceed ₱200.00.

16. The industrial partners shall keep full, complete, true and correct books of account, in which shall be duly recorded all the transactions of the store entrusted to their care and management, which said books shall be open to the inspection of the capitalist partners, or any representative thereof, at any hour of the day or night.

17. When this partnership agreement shall expire or be terminated, the goods on hand shall be inventoried, saleble goods shall be accounted for at invoice prices as billed to the store, with deductions as provided in Paragraph 14, and, in the case of actually damaged goods, an additional 5%, or such other deduction from

invoice price as appears right, shall be made. In case of dispute, arbitration shall decide the question as provided in Paragraph 19. After due balance the profits of the industrial partners, earned but not drawn, shall be paid to them, and the business shall thereafter continue as the business of Wassiamal Assomal.

18. No one of the parties to this agreement shall become bail or surety for any other person, or sign any note or other commercial paper as for the accommodation of any third party.

19. That all disputes and differences, if any, which shall arise between the parties to this agreement, shall be referred to and decided by two indifferent, disinterested and competent persons well acquainted with the Oriental trade, one chosen by either party, or by an umpire to be chosen by the referees in the usual course
21 in such or similar cases; and their decision, or his decision, shall in all respects, be final and conclusive on both the said disputing parties, and shall be given in writing within ten days next after such submission, or within such further time nor exceeding ten days, as they or he shall require.

20. That the industrial partners agree that other and further industrial partners may be admitted to the firm and for this purpose and also for *this purpose and also for* the purpose of agreeing to withdrawals of partners on such terms as shall appear to him just, authorise Mr. Hakumal or in his absence any of the capitalist partners then present in Manila, or in the absence of such, any person holding power of attorney as manager for such capitalist partners, as attorney-in-fact for each of them, to sign any revision of these articles of co-partnership made necessary by the admission of such new partners, or withdrawal of actual partners, provided, however, that no revision diminishing the percentage of the present industrial partners in the profits of the above mentioned branches shall be valid without the express approval of the said present industrial partners affected.

21. In case any partner shall die, shall become incapable of continuing by reason of mental or bodily disease or accident, or shall resign within the term by consent of the other partners a general liquidation shall be had and in addition to the terms of settlement provided for in Paragraph 17 hereof there shall be deducted
22 from the value of the goods on hand a speical depreciation of 5% thereof to cover old, unreasonable, shopworn and unsalable or slow selling goods on hand if such special depreciation has not already been charged for that year and the balance found due shall at once be paid over to such withdrawing partner or his legal representative.

Should the resignation or withdrawal take place voluntarily, but without the consent of the other partners or should a partner be dismissed for any of the reasons set forth in Paragraph 14 hereof, during the term, then what ever sum may be found due him after deducting the 5% above provided for, shall be paid over to him less

such profits as may have been earned while such partner has been voluntarily absent in India or elsewhere, but without any part of the profits accumulating subsequent to the date of withdrawal or dismissal. Provided that any partner dismissed for dishonesty, embezzlement or unfaithfulness as provided in Paragraph 11 shall forfeit all right to profits then earned but not paid over.

22. In all cases of death, withdrawal or dismissal during the term of any of the industrial partners, the firm shall continue nevertheless, the share which would have gone to such lost partner being distributed pro rata to the remaining partners or given to a substitute or substitutes admitted to the firm in his place in accordance with Paragraph 20 — the discretion of the capitalist partners.

In witness whereof the parties hereto have set their hands at Hong Kong, the*y* day and year first above written.

(Sgd.) WASSIAMALL, ASSOMALL & CO.,
" TOPANDAS WASSIAMALL,
23 " WATOOMAL WASSIAMALL,
" SHAMDAS HIRANAND,
" GANGARAM TILOKCHAND,
" NARAINDOS LEKHAJ,
" ALLUMAL HAKUMAL,
" KISHINCHAND DULTRAM,
" JHAMANDAS DEWANDAS,
" GAGANDAS ROCHIRAM,
" DHARMDAS TULSIDAS,
By Their Attorney, TOPANDAS WASSIAMALL.

H. GARDINER,,
Solicitor, Hong Kong.

A tru- copy.
D. A.

24 On the same date, October 25, 1919, the Honorable S. del Rosario, Judge of the Court of First Instance of Manila, Ninth Judicial District, issued the following writ of habeas corpus:

(Heading and Title Omitted.)

To the Collector of Customs, Manila:

You are hereby commanded to produce the bodies of Dharandas Tulsidas, Naraindas Lekhraj and Allumal Sukhrani, restrained of their liberty, as it is said, by you, before the Honorable S. del Rosario, Judge of the Court of First Instance of Manila, Branch I, or, in case of their absence or disability, before some other Judge of the same Court at Manila, Philippine Islands, on the 1st day of November, 1919, at 11:00 a. m., forthwith to do and receive what said Judge shall then and there consider concerning them in their behalf; and you are hereby summoned to then and there appear before the said Court and make due return in writing showing the

cause of the taking and detention of said persons above mentioned, in the manner prescribed by law.

Witness the Honorable S. del Rosario, Judge of the Court of First Instance of Manila, Branch I, this 25th day of October, 1919.

BENITO BLANCO,
Deputy Clerk.

On October 27, 1919, the foregoing writ of habeas corpus and petition therefor were duly served and returned by the Sheriff.

On October 31, 1919, the respondent, through his legal
25 representative the Attorney-General, filed his return to the writ of habeas corpus reading as follows:

(Heading and Title Omitted.)

Now comes the Insular Collector of Customs, by his legal representative the Attorney-General, and, in his official capacity, makes return to the writ of habeas corpus issued herein, as follows:

1. That the said Naraindas Lekhraj, Allumal Hakumal Sukhrain, and Dharmdas Tulsidas, the petitioners herein, are held in custody under and by virtue of the decisions rendered by a board of special inquiry and the Insular Collector of Customs, refusing them landing in the Philippine Islands, which decisions were duly made in the performance of their official duties pursuant to the immigration laws in force in this jurisdiction.

2. The respondent denies the allegations of the petition, except as same may be admitted in, or appear to be true from, the proceedings of the immigration officials in this case.

3. That the bodies of the said Naraindas Lekhraj, Allumal Hakumal Sukhrain, and Dharmdas Tulsidas will be produced in court to abide its further order in the premises.

Wherefore, the respondent prays this Honorable Court to dismiss the writ and remand the petitioners to the custody of the immigration authoritties for deportation.

Manila, October 31, 1919.

QUINTIN PAREDES,
Attorney-General, for the Respondent.

26 On January 5, 1919, the Honorable S. del Rosario, Judge of the Court of First Instance of Manila, Ninth Judicial District, entered judgment and decision in the case which reads as follows:

(Heading and Title Omitted.)

Decision.

The question to be decided in the present case is whether the petitioners, Naraindas Lekhraj, Allumal Hakumal Sukhrain and Dharmdas Tulsidas, as industrial partners of the partnership "Wassiamall Assomall & Co.", which is doing business in these Islands, are or are not merchants.

According to the document presented in this case, attached to the record and executed on September 29th last in the City of Hongkong, the genuineness of which is not questioned, the petitioners were admitted as industrial partners of said partnership, the first having a right to fifteen per cent of the profits, the second ten per cent and the third five per cent.

The Board of Special Inquiry, however, maintains, as appears from the record of the Bureau of Customs, that the petitioners are not merchants, being merely industrial partners.

This theory is contrary to law.

Not only the capitalist partners are merchants, but also the industrial partners who, upon being admitted as such for particular business purposes, do not contribute to the common fund any kind of property but only their industry and labor. It is for this
27 reason that they are given a participation in the profits sufficient to compensate them for the exercise of their intelligence and personal experience in the interest of the growth of partnership business in which they take part as industrial partners.

It is true that cases may arise where articles of association are simulated or the fictitious admission of industrial partners effected with the object of facilitating their free entry and residence in this country.

But the court does not find any evidence of simulation in the case at bar.

And if merely because a case of simulation arises, all documents for the admission of industrial partners are to be considered fictitious, the case may easily happen where injustice is committed, persons being excluded from this country who, being industrial partners and therefore, merchants, have the perfect right to enter and reside in United States territory, inasmuch as they fall within the exceptions stated in the Act of Congress of February 5, 1917.

The petition of habeas corpus is granted.

It is definitely ordered that the petitioners be placed at liberty, without any express pronouncement as to costs.

So ordered.

Manila, P. I., January 5, 1920. S. DEL ROSARIO,
Judge.

On January 6, 1920, the parties were duly notified of the foregoing judgment and decision entered in the case, and, on January 8, 1920, the respondent, through the Attorney-General, filed
28 a notice of appeal which reads as follows:

(Heading and Title Omitted.)

Notice of Appeal.

The respondent, thru the undersigned, hereby appeals from the decision rendered in this case.

Manila, January 7, 1920.

QUINTIN PAREDES,
Attorney-General.

On January 8, 1920, the Clerk of the Court of First Instance of Manila certified the proceedings had in the case and notified the parties that on this same date the record of the case was transmitted to the office of the Clerk of the Supreme Court of the Philippine Islands for the purposes of the appeal.

On the same date, January 8, 1920, the case was duly docketed, on appeal, bearing No. 16139 of the General Register of the Supreme Court of the Philippine Islands.

On the following day, January 9, 1920, the Clerk of the Supreme Court duly notified the Attorney-General of the receipt of the case, on appeal.

On February 9, 1920, the brief for the respondent and appellant was filed.

On March 27, 1920, the brief for the petitioners and appellees was presented and on July 13th of the same year the case was finally submitted to the Supreme Court, for decision on the merits.

29 Thereafter, on September 9, 1920, the Supreme Court of the Philippine Islands rendered its decision in the case, which said decision is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

In Banc.

G. R. No. 16139.

Submitted July 13, 1920; Promulgated September 9, 1920.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ and ALLUMAL SUKHRANI, Petitioners and Appellees,

versus

THE COLLETOR OF CUSTOMS, Respondent and Appellant.

Justices present: The Chief Justice, Victorino Mapa, and Messrs. E. Finley Johnson, A. C. Carson, Manuel Araullo, Geo. A. Malcolm, Ramon Avanceña, P. M. Moir, and Ignacio Villamor.

Decision.

JOHNSON, *J.*:

This is an appeal from the decision of the Court of First Instance of the City of Manila, granting the writ of habeas corpus in favor of the appellees.

It appears from the record that on the 26th day of September, 1919, the appellees arrived at the port of Manila on the S. S. "Tango Maru" and asked permission to enter the Philippine Islands, upon the theory that they were merchants. Some question arose concerning the right of the appellees to enter the Philippine Islands. A board of special inquiry examined into their right to enter the Philippine Islands and reached the conclusion that they
30 were not merchants and, therefore, did not belong to the class of British Indian subjects who were permitted to enter the territory of the United States, and denied them the right to enter.

From that decision of the board of speciad inquiry an appeal was taken to the Collector of Customs and the said decision was by him affirmed. Thereupon a petition for the writ of habeas corpus was presented in the Court of First Instance of the City of Manila. The Attorney-General answered the petition. Upon the issue presented by the petition and the answer the cause was submitted to the court for decision. After hearing the respective parties the Hon. Simplicio del Rosario reached the conclusion that the appellees were merchants, granted the writ of habeas corpus, and ordered the appellees discharged from the custody of the law. From that decision the Attorney-General appealed to this Court.

The Attorney-General alleges that the lower court committed an error in deciding that the appellees were merchants and had the right to enter the territory of the United States.

The appellees are British Indian subjects, who came from Hyderabal Sind, India. Under the Act of Congress of February 5, 1917, all British Indian subjects coming from the district or province in which Hyderabal Sind is located are absolutely prohibited from entering the territory of the United States unless they belong to some of the exempted classes mentioned in Section 3 of said law. Among the exempted classes are merchants.

Granting, for the purpose of the argument, that the appellees are merchants, it must not be forgotten that proof of that fact
31 must be established in accordance with the provisions of the law. Section 6 of the Act of Congress of May 6, 1882, as amended by Sec. 6 of the Act of Congress of July 5, 1884, which has been continued in force under all the subsequent amendments of said law, provides how aliens who claim to belong to an exempted class may prove that fact and be admitted into the territory of the United States. The evidence which such aliens must present has for years been known as the "Section-Six Certificate." The law specifies what said Section-Six Certificate must contain. The law further provides that the said Section-Six Certificate "shall be the sole evidence permissible on the part of the person so producing the

same to establish a right to enter into the territory of the United States." (Naroomal et al. vs. Collector of Customs, R. G. No. 16058.)

The appellees did not present the section-six certificate. The board of special inquiry was, therefore, justified in disregarding all other proof relating to their occupation as merchants.

The foregoing is sufficient to justify a confirmation of the decision of the department of customs, ordering the deportation of the appellees. In the absence of the section-six certificate, the department of customs was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands.

Not only did the appellees fail to furnish the "sole evidence permissible" to establish their right to enter into the Philippins Islands, but they failed to show absolutely that they were merchants in the country from which they came. In fact, they expressly admit
32 that they were not merchants in their home province or municipality. Their sole contention was and is that they had entered into a partnership or association by virtue of which they were to become merchants upon their arrival in the Philippine Islands. The law does not contemplate that aliens who claim to belong to an exempted class, or aliens otherwise prohibited from entering the United States, shall be permitted to enter the territory of the United States to become merchants. The fact that they were merchants before they entered the United States is the fact that they must establish. It is not sufficient to place aliens in the exempted class because they desire to become members of the exempted class after they enter the territory of the United States. The law contemplates that they shall belong to the exempted class before they go to the territory of the United States. They must be merchants or belong to the exempted class before and not after they enter the territory of the United States.

There is absolutely nothing in the record which shows that the department of customs abused its power, authority or discretion in the slightest degree. The Attorney-General is right in his second assignment of error that the lower court committed an error in modifying, altering or reversing the decision of the department of customs.

For all of the foregoing reasons the judgment of the Court of First Instance granting the writ of habeas corpus is hereby revoked, and it is hereby ordered and decreed that the judgment of the department of customs ordering the deportation of the appellees be and
33 the same is hereby affirmed, without any finding as to costs.

Ten days after notice of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

Mapa, Ch. J., and Araullo, Malcolm, Avanceña, Moir, and Villamor, JJ., concur.

On September 10, 1920, the parties were duly notified of the foregoing decision, and, on September 14, 1920, the attorney for the petitioners and appellees excepted to the said decision and filed the following motion for rehearing:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands, Manila.

G. R. No. 16139.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL SUKHRANI, Petitioners, Appellants,

versus

THE INSULAR COLLECTOR OF CUSTOMS, Respondent, Appellee.

Motion for Rehearing.

Come now the petitioners in the above entitled case and respectfully pray this honorable court for rehearing, or alternatively for modification of the decision in such a manner as to eliminate reference to a "Section Six Certificate."

This motion is based upon the following considerations:

34 Argument.

The Court held in this case that a "Section Six Certificate" is a condition precedent to prove the right of persons born within certain geographical limits (which include British India) to enter the territory of the Philippine Islands.

It is respectfully submitted that this decision is wrong as a matter of law and, if allowed to stand, would be appalling in its consequences.

The "Section Six Certificate" which is well known in the Immigration Law, relates wholly to Chinese and is found only in the Chinese Exclusion Law. It has never been a part of the general Immigration Law applying to persons other than Chinese, and not a single case can be found in any Federal Court, from the Supreme Court of the United down to the very lowest Federal tribunal, holding that such a document is necessary in case of any person other than a Chinese member of the exempt class. The Certificate was originally in form and as a matter of technical law, the permission of the Government of China issued in accordance with the terms of the Treaties of 1880 and 1894 for a Chinese subject to go to America. After the denunciation of the Treaty of 1894, they continued to be issued and approved by American consuls in China in accordance with the terms of Act of July 5, 1884. (See Circular Letter to American Consuls of June 26, 1905.)

The system was afterward extended to permit Chinese subjects resident in countries other than Chica to secure such Certificate

issued by the authority of a proper officer of the Government under which they resided, and on October 17, 1907, the Insular Collector of Customs issued Chinese Immigration Circular No. 19
35 which gives a list of the countries wherein there are officials authorized to issue "Section Six Certificates" which would be recognized at the Customs Houses in the Philippines. British India is not included in the list and there is no way in which a Chinese resident of India can obtain a "Section Six Certificate" to enter these Islands today.

As stated above the "Section Six Certificate" is a form of proof which is expressly limited by law to Chinese. There is no legal authority whatsoever aside from the decision in this and a similar case, requiring it from any person not Chinese. The Government of India has no law and no machinery for issuing such Certificates, and even if they were to be issued, the American consuls in India have no authority to visé such Certificates. It follows that it is illegally impossible for any subject of India to obtain a "Section Six Certificate" or any other document (except perhaps the passports which have been duly presented in the present case), which even remotely resembles a "Section Six Certificate."

The effect of the present decision in making the production of a paper impossible to obtain, a condition precedent to entry, is therefore absolutely to prevent the entry into the Philippine Islands of all British Indians, without the slightest regard to their actual status. It means that not one single owner of a store in the Philippine Islands (and it must be remembered that the capitalist partners of Manila stores owned by Indians uniformly reside in India) can by any possibility visit his establishment in the Philippine Islands. It means the absolute and complete cessation of the entry of students of travelers and of all other classes of East Indians. Such
36 certainly was not the intent of the Legislature, such certainly is not the way the law has been enforced in the United States and such certainly, with all due respects to this high tribunal, is not the law in the Philippine Islands.

Inasmuch as this basic error of law has apparently influenced the court in its decision on the merits, a rehearing is respectfully prayed for. But even though it should be found that there were other grounds upon which the decision could be sustained, it is respectfully prayed that this particular part of the decision be modified lest an unfortunate precedent should be created.

A rehearing is also prayed for on the ground that a division of the court has no jurisdiction to decide a case on appeal. See argument for appellant in case of U. S. vs. Francis J. Cyrus, R. G. No. 14416.

Respectfully submitted.

HARTFORD BEAUMONT,
Attorney for Petitioners, Appellants.

127 Escolta, Manila.

On October 30, 1920, the Supreme Court of the Philippine Islands, upon considering the foregoing motion for rehearing, denied the same.

On November 3, 1920, the attorney for the petitioners-appellants filed an exception to said resolution of the Supreme Court dated October 30, 1920.

Thereafter, on November 8, 1920, the Clerk of the Supreme Court of the Philippine Islands entered the final judgment in the
37 case which reads as follows:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

G. R. No. 16139.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL SUKHRANI, Petitioners and Appellees,

versus

INSULAR COLLECTOR OF CUSTOMS, Respondent and Appellant.

Judgment.

November 8, 1920.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause, and by virtue of *of* the decision of this Court dated September 9, 1920, the judgment appealed from, granting the writ of habeas corpus, is hereby revoked, and it is hereby ordered and decreed that the judgment of the department of customs ordering the deportation of the appellees be and the same is herby affirmed, without any finding as to costs.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified correct.

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

On November 12, 1920, the attorney for the petitioners-appellants filed the following petition:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands, Manila.

38 Case G. R. No. 16139.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL SUKHRANI, Petitioners, Appellants,

versus

THE INSULAR COLLECTOR OF CUSTOMS, Respondent, Appellee.

Notice to Petition for Writ of Certiorari.

Come now the petitioners in the above entitled case and hereby give notice of their intention to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision of this Court entered in this case on October 30, 1920, and move to stay the enforcement of the judgment of this Court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States by filing a supersedeas bond.

Manila, P. I., November 12, 1920.

Respectfully submitted,

HARTFORD BEAUMONT,
Attorney for Petitioners.

On November 13, 1920, the Supreme Court passed a resolution granting the above petition for a stay of execution of the judgment rendered in the case during the pendency of the application for the writ of certiorari.

39 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing thirty-eight (38) typewritten pages contain a true and correct translation and transcript of the record of the case entitled Dharandas Tulsidas, Naraindas Lekhraj and Allumal Sukhrani, Petitioners and Appellees, versus The Insular Collector of Customs, Respondent and Appellant, for a writ of habeas corpus, bearing No. 16139 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this seventeenth day of February, A. D. nineteen hundred and twenty-one.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the transcript of the record of the proceedings of this court in the case entitled Dharandas Tulsidas, Naraindas Lekhraj, and Allumal Sukhrani, Petitioners and Appellees, versus The Insular Collector of Customs, Respondent and Appellant, for a writ of habeas corpus, bearing No. 16139 of the docket of this court, certified by me on the 17th day of February, 1921, for filing in the Supreme Court of the United States, was correct and complete as the same then appeared in this court.

I further certify that from the date of the said certification, February 17th, 1921, to the date hereof, the record and proceedings in the said case in this court contains no new and additional matter except the entry setting forth the receipt of the foregoing writ of certiorari of the Supreme Court of the United States on the 14th day of December, 1921, and except also the entry of the stipulation hereinafter set out.

In pursuance of the command of the said writ of certiorari I now hereby certify that on the 14th day of December, 1921, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

The Supreme Court of the United States, October Term, 1921.

No. 314.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ and ALLUMNAL SUKHRANI, Petitioners,

vs.

THE INSULAR COLLECTOR OF CUSTOMS, Respondent.

It is hereby stipulated that the transcript of the record of the case entitled Dharandas Tulsidas, Naraindas Lekhraj, and Allumnal Sukhrani, Petitioners and Appellees, versus The Insular Collector of Customs, Respondent and Appellant, for a writ of habeas corpus, bearing No. 16139 of the docket of the Supreme Court of the Philippine Islands heretofore filed in the Supreme Court of the United States, with the petition for the writ of certiorari, be taken as a re-

turn to the writ issued by the Supreme Court of the United States, and dated the twenty-second day of October, 1921.

[Seal of the Supreme Court of the Philippine Islands.]

ADAM C. CARSON,
Attorney for the Petitioners in the Supreme Court of the United States.
GRANT T. TRENT,
LT. COL. J. A.,
Attorney for the Respondent in the Supreme Court of the United States.

Dated, the 3rd day of November, 1921.

I further certify that the above is a true and correct copy of said stipulation and the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 15th day of December, 1921.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court, of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the Philippine Islands, Greeting:

Being informed that there is now pending before you a suit in which Dharandas Tulsidas, Naraindas Lekhraj, and Allumal Sukhrani, are appellants, and The Insular Collector of Customs is appellee, R. G. No. 16139, which suit was removed into the said Supreme Court, by virtue of an appeal from the Court of First Instance of the City of Manila, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-second day of October, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,256. Supreme Court of the United States, October Term, 1921. No. 314. Dharandas Tulsidas et al. vs. The Insular Collector of Customs. Writ of Certiorari.

[Endorsed:] File No. 28,256. Supreme Court U. S., October Term, 1921. Term No. 314. Dharandas Tulsidas et al., Petitioners, vs. Insular Collector of Customs. Writ of certiorari and return. Filed Jan. 14, 1922.

FILED
MAY 5 1921
JAMES D. MAHER,
CLERK.

PETITION FOR WRIT OF CERTIORARI AND MEMORANDUM IN SUPPORT THEREOF.

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 1477

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, AND ALLUMAL HACKUMAL SUKHRANI, PETITIONERS,

vs.

THE INSULAR COLLECTOR OF CUSTOMS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Petition filed May 5, 1921.

(28,256)

ADAM C. CARSON,
New York City,
Attorney for Petitioners.

HARTFORD BEAUMONT,
Manila, P. I.,

W. DAVIS CONRAD,
New York City,
of Counsel.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

(28,256)

IN THE

Supreme Court of the United States

No. 899.

OCTOBER TERM, 1920.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL HACKUMAL SUKHRANI,
Petitioners,

vs.

THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

Notice.

Lieutenant-Colonel Grant T. Trent,
Judge Advocate, U. S. Army,
Washington, D. C.,
Attorney for the Respondent.

Sir:

Please take notice that on Monday the third day of October, 1921, upon the coming in of the Court on that day, I will submit a petition for a writ of certiorari directed to the Supreme Court of the Philippine Islands in the above entitled cause.

New York City, September 14th, 1921.

A. C. CARSON,
Attorney for the Petitioners.

The foregoing notice is hereby accepted and delivery of a copy thereof and of the petition for a writ of certiorari and memorandum in support of the petition are hereby acknowledged this 14th day of September, 1921.

GRANT T. TRENT,
Attorney for Respondent.

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THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

To the Honorable,
The Supreme Court of the United States:

Dharandas Tulsidas, Naraindas Lekhraj, and Allumal Hakumal Sukhrani, British Indian subjects, natives of Hyderabad Sind, India, two of whom are former residents of the Philippine Islands, by their undersigned counsel, respectfully petition this Honorable Court for a writ of certiorari addressed to the Supreme Court of the Philippine Islands in habeas corpus proceedings therein styled "Dharandas Tulsidas, Naraindas

Lekhraj, and Allumal Hakumal Sukhrani, petitioners and appellees, versus The Insular Collector of Customs, respondent and appellant," No. 16139, and in support of this petition respectfully represent:—

That on October 20 1919, The Insular Collector of Customs of the Philippine Islands, affirming a ruling of a Board of Special Inquiry, "refused landing" in the Philippine Islands to your petitioners, and ordered that "they be deported to the port of embarkation" from which they had arrived at the port of Manila on September 26, 1919 (Record, pages 4, 5, 15).

That thereafter, on January 5, 1920, the Court of First Instance of Manila entered its judgment, in Habeas Corpus proceedings, sustaining your petitioners' contentions that they were unlawfully detained and deprived of their liberty by The Insular Collector of Customs, and "definitely ordered that the petitioners be placed at liberty" (Record, pages 26, 27).

That thereafter, on November 8, 1920, upon an appeal from this judgment and order taken by The Insular Collector of Customs, the Supreme Court of the Philippine Islands entered its final judgment reversing the judgment entered by the Court of First Instance of Manila, and affirmed "the judgment of the department of customs ordering the deportation" of your petitioners (Record, page 37).

That, thereafter, on November 13, 1920, the Supreme Court of the Philippine Islands granted a stay of execution of its judgment in order to permit your petitioners to present this application for a writ of certiorari (Record, page 38).

A duly certified copy of the entire record of the case, including the proceedings in the court to which the writ of certiorari is asked to be directed, is furnished herewith as an exhibit, and includes:

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GROUNDS RELIED UPON FOR THE ISSUANCE OF THE WRIT.

I.

Your petitioners in this case have been detained and ordered deported from the Philippine Islands

under color of authority of the Act of Congress of February 5, 1917, Chapter 29, Section 3, notwithstanding their contention that as merchants and as such, members of one of the privileged classes expressly excepted from the exclusion provisions of this section of the Act, there is no lawful authority for their continued detention and deportation.

Under Section 27 of the Act of Congress approved August 29, 1916 (39 Stat., 555), read together with Section 5 of the Act to amend the Judicial Code, approved September 6, 1916, this Honorable Court has jurisdiction by certiorari, or otherwise, to require that there be certified to it for review and determination any cause decided by the Supreme Court of the Philippine Islands "in which the Constitution or any statute * * * of the United States is involved."

II.

The evidence submitted by your petitioners stands unchallenged and uncontroverted; and there was no dispute in the Court below as to the facts upon which your petitioners base their contention that they are merchants within the meaning of Section 3 of the Act.

The undisputed testimony of the witnesses who appeared before the Special Board of Inquiry (Record, pages 7, 8, 12, 13, 14), read together with the articles of partnership of the firm of "Wassiamall Assomall & Co." (Record, page 16), silk merchants, with their principal place of business and domicile in Manila, which were submitted to the Board, and "the genuineness of which is not questioned" (Record, page 26), discloses:

That your petitioners are industrial partners of that co-partnership, and joined in the execution of the articles of partnership; and, that they receive no salary or wages, but share in the profits of the business—Naraindas Lekhraj receiving 18%, Allumal Hakumal Sukhrani 10% and Dharandas Tulsidas 5% thereof;

That two of your petitioners, Sukhrani and Lekhraj, are former residents of the Philippine Islands, and were, while in the Islands, industrial partners of the predecessors in the business of the above mentioned co-partnership, the former having been absent in India for about sixteen months following a residence in the Islands of about three years; and the latter having been absent in India for about three years following a residence in the Islands of about nineteen years;

That the occupation of your petitioners set out in their respective passports, issued under authority of the British Government is that of salesmen; and that as industrial partners of the firm of "Wassiamall Assomall & Co." they will perform the duties of salesmen and/or sub-managers;

That the articles of co-partnership submitted as evidence were executed in Hong Kong not long prior to your petitioners' return to the Islands, in pursuance of a reorganization of the firm after the death of some of the former partners.

III.

The Insular Supreme Court erred in basing its judgment on a ruling that the sole evidence per-

missible in support of your petitioners' claim that they are merchants is the presentation of the "Section-Six Certificate," in the form prescribed under the Chinese Immigration Laws and regulations, and that no such certificate having been presented, "the Board of Special Inquiry, was, therefore, justified in disregarding all other proof relating to their occupation as merchants" and "was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands" (Record, page 29).

IV.

The Insular Supreme Court further erred in ruling that your petitioners must be excluded "not only" because they failed to furnish the "sole evidence permissible," but, also, because they failed to show "that they were merchants in the country from which they came" (Record, page 39).

V.

The Special Board of Inquiry and the Insular Collector of Customs based their findings that your petitioners are not "merchants," as that term is used in the Act, on a misconception of the law applicable to the undisputed and uncontroverted facts disclosed by the record of the proceedings had before them, in that they erroneously assumed that the evidence offered by your petitioners that they are industrial partners of a mercantile co-partnership, domiciled and doing business in Manila, is not competent evidence in support of your petitioners' claim of a right to enter and remain in the Philippine Islands as members of one of the privileged classes mentioned in the Act, and, on the con-

trary, constitutes proof that your petitioners are not merchants as that term is used in the Immigration Act (Record, pages 9, 15).

The Court of First Instance of Manila held directly the contrary, and the Insular Supreme Court, in reviewing the judgment of the Court of First Instance and sustaining the action of the Board, refrained from any comment on these conflicting rulings, and based its decision on grounds which do not appear to have been raised or considered by the Special Board of Inquiry or the lower Court

While it is admitted that, under the express provisions of the statute, the decision of a Board of Special Inquiry, such as that now under consideration, is final, when affirmed on administrative appeal (Act, February 5, 1917, Chapter 29, Section 17); nevertheless, this Honorable Court and the Courts of the Philippine Islands may review the decision of such administrative officers, in Habeas Corpus proceedings, when it is alleged and shown that they have abused the power and discretion conferred upon them, or that they *rested their conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record.*

The ruling of the Board of Special Inquiry and of the respondent Collector of Customs, that an industrial partner in a Philippine mercantile copartnership, who gives his services to the business as salesman or manager, is not a merchant as that term is used in the Immigration Act, was based upon such a manifestly erroneous construction and misconception of the Act of Congress and the laws of the Philippine Islands touching commercial partnerships, that the Courts of the Philippine

Islands and this Honorable Court may and should review and reverse, in Habeas Corpus proceedings, the order of the respondent detaining, and directing the deportation of your petitioners.

WHEREFORE, your petitioners respectfully pray for a writ of certiorari, addressed to the Supreme Court of the Philippine Islands, directing that Court to certify to this Court the record in the case pending therein entitled "Dharandas Tulsidas, Naraindas Lekhraj and Allumal Hakumal Sukhrani, petitioners and appellees, versus The Insular Collector of Customs, respondent and appellant," No. 16139, in order that the same may be reviewed and determined by this Court as provided by law, and that the judgment of the Supreme Court of the Philippine Islands in said case may be reversed by this Honorable Court.

ADAM C. CARSON,
Attorney for the Petitioners.

State of New York,
County of New York, } ss.:
City of New York,

Adam C. Carson, being duly sworn, says that he is one of the attorneys and counsel for the petitioners herein; that he prepared and has read the foregoing petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

ADAM C. CARSON.

Subscribed and sworn to before
me this day of May, 1921.

E. M. GUCKES,
Notary.

MEMORANDUM IN SUPPORT OF THE PETITION FOR THE WRIT OF CERTIORARI.

Preliminary Observations, and Summary Review of the Record.

The name of the writer of this memorandum appears in the record as one of the members of the Supreme Court of the Philippine Islands, present at the date of the promulgation of its decision in this case (Record, page 22. The references in the petition are to the paging of the original certified copy of the record. Those in this memorandum to the paging in the printed copy of the record filed herewith). But his signature was not attached to the decision, and an examination of the records of that Court will further disclose that, at that time, he had submitted his resignation from the Court and was on the eve of his departure for the United States; and that a minute order was duly entered by the Court a few days later, setting forth the fact that he took no part in the discusssion and disposition of this, as well as a number of other cases, submitted on the briefs, without oral argument, which were pending final judgment when he left the Islands.

It is admitted at the outset that the evidence of record as to the status of the petitioner Tulsidas falls far short of being as satisfactory and convincing as that submitted by his co-petitioners, Lekhraj and Sukhrani; and, except in so far as specific reference is made to his case, what is said in this memorandum is submitted with special reference to the evidence submitted by Lekhraj and Sukhrani.

The material facts upon which the prayer for

the writ rests, as disclosed by the record, may be restated and summarized briefly as follows:

The Bengal Bazaar is a large silk store in Manila, owned and conducted for many years past by natives of British India, with an invested capital of more than one hundred thousand pesos. Upon the death of the former proprietors, their heirs, most, if not all of whom reside in India, reorganized the business, and on the 19th day of September, 1919, entered into articles of partnership with seven of their fellow-countrymen, under the terms of which these seven became industrial partners, and undertook for a specified share in the profits, to carry on the business. The industrial partners invested no money in the business; and the heirs, the capitalist partners, reserved to themselves the direction, control and management of the partnership, but with an express provision in the articles for the appointment of "such manager or managers from the industrial partners as they may deem necessary or proper for the management of the store above mentioned."

Three of the industrial partners were appointed managers of the store in Manila, two of whom are the petitioners Lekhraj and Sukhrani.

(NOTE.—In the original petition, hastily prepared because of scant time for filing, after receipt of the record forwarded from Manila, it is said that these petitioners are sub-managers. But a re-examination of the record discloses that, as first stated, they were managers, and not merely sub-managers of the store in Manila.)

The petitioner Tulsidas is mentioned in the articles of partnership, but he was not given any part in the supervision or management of the busi-

ness, other than that to which he is entitled by law by virtue of his interest therein as an industrial partner.

Lekhraj is entitled to receive 15%, Sukhrani 10% and Tulsidas 5% of the profits of the business. None of them receives any salary; and under the express provisions of the articles they are required to bear their share of the losses of the business in their accountings with the firm and with each other, in proportion to the share of the profits to which they are respectively entitled; all of them, nevertheless, being jointly and severally liable to third parties for the debts and obligations of the firm. Compania Maritima vs. Munoz, 9 Phil. Rep., 326.

Both Lekhraj and Sukhrani were old employees in the store in Manila, Lekhraj having served there, as a salesman, for about nineteen years and Sukhrani for more than three years. At the date of the reorganization of the business, Sukhrani had been away from Manila for about sixteen months on vacation at his home in India; and Lekhraj at that time had been away from Manila at his home in India for about three years. Tulsidas, who was only nineteen years old, had never been in Manila.

The articles of partnership were executed in Hong Kong, and soon thereafter, on September 26, 1919, Lekhraj, Sukhrani and Tulsidas arrived in Manila Bay, where they were detained by the Immigration Officers and brought before a special examining board.

The Immigration Officers being of opinion that "Industrial partners are not merchants within the meaning of the Immigration Law," refused them

landing in the Philippines, and entered orders for their deportation.

In *habeas corpus* proceedings, in the Court of First Instance of Manila, these orders were set aside; but the judgment of the Court of First Instance was reversed on an appeal to the Supreme Court of the Philippine Islands, wherein a decision was filed on the 9th of September, 1920, directing the entry of final judgment sustaining the deportation orders:—not on the grounds assigned by the Immigration Officers, but because of the failure of the petitioners to present "section six" certificates, and for the additional reason that they had failed to submit proof that prior to their arrival in Manila they had been merchants in the country from which they came.

The petition for a writ of certiorari is herewith submitted in order to secure a review of the judgment of the Supreme Court of the Philippine Islands entered in pursuance of this decision on October 30, 1920.

It is confidently submitted, on behalf of Lekhraj and Sukhrani, that the evidence of record affirmatively discloses that they are "merchants" as that term is used in the Immigration Laws of the United States.

Indeed, we go farther, and confidently submit that the evidence as to their status, at the time of their arrival in the port of Manila, brings them squarely within the four corners of the rigid and severely restricted definition of that term which has been adopted by the Immigration Officers of the United States, with the approval of the Secretary of Labor, in the enforcement of the so-called latitudinal and longitudinal exclusion clause of

section 3 of the Immigration Act, and is as follows:

> "A merchant is a person engaged, in good faith, in buying and selling merchandise, at a fixed place of business, which is conducted in his name and under his supervision, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant."

There are substantial grounds for a contention that this definition (which is a slightly modified form of the statutory definition of the word *merchant* as found in the Chinese Immigration Laws, incorporating therewith a requirement that the merchant's fixed place of business must be conducted "under his supervision." Sec. 2 of the Act of Congress of May, 1892, as amended November 3, 1893) is too narrow and restricted, in that it appears to exclude many members of the merchant class whose admission to the territory of the United States was contemplated by the Congress when it laid down the exceptions to the general exclusion provisions of Section 3 of the Immigration Act. We do not deem it necessary, however, to challenge the substantial accuracy of the definition in submitting this petition on behalf of Lekhraj and Sukhrani, because, as we contend, the facts as to their status as disclosed by the record bring them squarely within its terms:—it being understood, however, in accord with the well settled doctrine of the courts in the construction

and application of the word merchant as found in the Immigration Laws of the United States, that the requirement as to the conduct of his business by the merchant "in his name and under his supervision," contemplates and includes the case of a partner in a mercantile co-partnership, who, as such partner, or by express agreement with, or by specific designation of his associates, is charged with and participates in the supervison and management of the business of the partnership; and whose name is expressly mentioned in the articles of partnership as one of the partners doing business under the firm name. Tom Hong vs. U. S., 190 U. S., 517; Lee Ken vs. U. S., 62 Fed. Rep., 914; Wong Ah Gah vs. U. S., 94 Fed. Rep., 831; Wong Fong vs. U. S., 77 Fed. Rep., 168.

In these days of modern business and great combinations of capital and material resources, we do not believe that it will be seriously contended that, in excepting merchants from the exclusion provisions of the Immigration Act, the Congress intended to admit only those petty tradesmen who individually and personally own, control and supervise a particular business; and to exclude the managing partners and directors of great mercantile enterprises, which, because of their magnitude or for some other sufficient reason, are jointly owned, controlled and supervised by two or more associates in business operating under one form or other of partnership agreement.

The evidence in support of the facts relied upon by Lekhraj and Sukhrani as proof of their status as merchants, at the time of their arrival in Manila, is clear and convincing.

Had any doubt arisen as to the truth and accuracy of their uncontroverted statements as to their former residence in Manila, and their employment as salesmen in the silk-store in Manila to which they were returning as industrial partners, such doubts could readily have been resolved by calling for additional evidence, easily obtainable in the locality in which the proceedings were had. But no question appears to have been raised by the immigration officers at the time when they entered the deportation orders, or in the course of the *habeas corpus* proceedings in the insular courts, as to the facts relied upon by these petitioners; and these orders appear to have been based, not upon a ruling that the facts relied upon by the petitioners were not sufficiently established by the evidence, but upon the erroneous ruling that "industrial partners" in a mercantile co-partnership are not merchants within the meaning of that word in the Immigration Act (Record, page 14).

We concede that, as to the petitioner Tulsidas, there is substantial ground for a contention that notwithstanding the manifestly erroneous grounds upon which he has been denied landing in the Philippines, the writ should not issue because of the lack of sufficient affirmative evidence in the record in support of his claim that he is a merchant, and as such entitled to admission to American territory. If his own statements as to his employment as a salesman in India, for several years prior to his arrival in Manila, be accepted without reserve, it sufficiently appears, perhaps, that he is a member of the merchant class in the broad acceptation of that term. But, unlike his co-petitioners Lekhraj and Sukhrani, he does not

appear to have any direct participation in the management and supervision of the business in Manila in which he is an industrial partner; and, as a newcomer to the islands, something more than his own uncorroborated statements as to his status in the country from which he came might fairly and reasonably have been required of him.

It is not our contention that the mere fact that an immigrant's name appears in the articles of partnership of a mercantile co-partnership is affirmative proof that he is a merchant; but, rather, that it is competent evidence, tending to establish his status as a merchant, which may properly be taken into consideration together with the other evidence in the record, in the determination of a question as to his true status.

Nature and object of these proceedings.

This is a test case.

The issuance of the writ, followed by a review by this Honorable Court of the record made up in the courts of the Philippine Islands, on the merits, is not sought merely in the hope that this Court may find, in the record of this particular case, facts sufficient to warrant the admission of some or all of the petitioners to residence in the Islands.

Affirmative remedial action by this Court is invoked to correct errors in the construction and application of the immigration laws of the United States by the Supreme Court of the Philippine Islands, which, if permitted by this Court to pass unnoticed and uncorrected, will result, not merely in the deportation of the petitioners, but also in the exclusion of all members of the ex-

cepted classes seeking admission to the Islands from continental Asia, other than Chinese persons seeking admission to the Islands under the Chinese Immigration Laws; and this, whether they be newcomers, or persons now living and lawfully engaged in business in the Islands who may hereafter leave the Islands temporarily, on business, or for pleasure, or for the restoration of their health by a visit to their native land.

The intervention of this Honorable Court is further and especially invoked to secure the correction of erroneous rulings by the Philippine Immigration Officers which deny the status of merchants under the Immigration Laws of the United States to the local managing-partners and managing-agents of Philippine branches of British-Indian and other continental Asiatic mercantile houses in the Philippines, of which the capital is furnished by non-resident British-Indians and other continental Asiatics, in all cases wherein it appears that such local managing-partner or managing-agent is a continental Asiatic who has not furnished a part of the capital invested in the business.

The rulings of the Insular Supreme Court.

The Supreme Court of the Philippine Islands, the court of last resort in that jurisdiction, based its judgment sustaining the deportation orders against the petitioners, on two grounds (Record, page 22).

I. The principal ground is set forth in the Court's ruling that "the sole evidence permissible" in support of the petitioners' claim that they are merchants is the presentation of a "Section-six

Certificate," and that no such certificate having been presented, "The Board of Special Inquiry was, therefore, justified in disregarding all other proof relating to their occupation as merchants" and "was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands" (Record, pages 23-24).

But not only does the law excluding continental Asiatics, other than Chinese, from American territory, contain no *requirement* for the presentation by immigrants of the excepted classes, of "Section-six Certificates" such as are prescribed under the Chinese immigration laws; but no law or regulation with the force of law *authorizes* the issuance of such certificates to immigrants applying for admission to the Philippines from continental Asia, other than Chinese persons; and the record discloses that the production of such certificates was not even called for by the Philippine immigration officers who examined the petitioners and ordered their deportation.

The so-called "Section-six Certificates" were devised and authorized as a part of the machinery which was deemed necessary in the administration of the Chinese Immigration Laws and Treaties: and no continental Asiatic—other than a Chinese person—seeking admission to the Philippine Islands as a member of one of the excepted classes, can lawfully procure the issuance of such a certificate, or secure for himself the rights and benefits to which a Chinese person is entitled, under the Chinese Immigration Laws and Treaties, by virtue of the possession of such a certificate. Section 6, Act of May 6, 1882, as amended and

added to by Act of July 5, 1884 (22 Stat. L., 58, 23 Stat. L., 115).

So long, then, as this decision of the Court of last resort in the Philippines stands unreversed in the Philippine Reports, so long must the express provisions of the Act of Congress excepting the members of certain classes of continental Asiatics, other than Chinese persons, from its general exclusion provisions, remain a dead letter in that jurisdiction; and British-Indians and citizens and subjects of friendly nations on the continent of Asia, other than Chinese persons, will be denied the rights and privileges which the Congress, in express terms, has conferred upon them.

Subject only to the control of this Honorable Court the immigration officers and the inferior courts of the Philippine Islands are bound by the decisions and rulings of the Supreme Court of the Islands; and the record discloses that that court declined to modify or amend its rulings on a motion for a rehearing, specifically inviting its attention to the impracticability of the procurement of "Section-six Certificates" by continental Asiatics other than persons of Chinese descent (Record, pages 25-26).

II. As an additional ground for its judgment sustaining the order deporting the petitioners, the Insular Supreme Court ruled, in effect, that continental Asiatics, seeking admission to the Philippine Islands as merchants, must submit proof that they were merchants, in the country of their origin, prior to their arrival in the Islands; and that proof lished mercantile business in the Islands in which

that they are merchants at the time of their arrival, and that they are seeking admission to the Islands for the purpose of engaging in an estab they have an interest, is not sufficient to entitle them to admission as members of one of the excepted classes (Record, page 24).

But all that is required by the statute is proof that the applicant is a merchant at the time when he seeks admission to American territory; and if that fact can be, and is, established, without production of proof of prior status in the country of which the applicant is a native, there is nothing in the statute which requires the submission of proof of such prior status.

Doubtless cases may and will arise wherein the courts and the immigration officers would be justified in declining to accept, as satisfactory or convincing, evidence of an immigrant's status as a merchant at the time of his arrival in American territory, which fails to establish the fact that he was a merchant in his own country prior to his arrival. But there is no authority in the Act of Congress for the requirement of the production of evidence as to status prior to arrival, under an arbitrary rule, which would preclude the courts or the immigration officers from the examination or consideration of other evidence submitted by the applicant, in cases wherein it would be manifestly unreasonable and impracticable to apply the rule, such as, for example, the case of a former resident domiciled in American territory, returning to his domicile after a temporary absence.

The application of an arbitrary rule of this kind would deny admission to the Islands to a British-

Indian merchant doing business in the city of Manila, returning from a business trip to India; to an adult son of such a merchant returning to the Islands to take over his father's business after completing his mercantile education in Hong Kong or Calcutta; and to many others whose admission to the Islands as members of the merchant class was clearly contemplated by the law-maker.

Subdivision 3 of Rule 8 of the Immigration Rules promulgated by the Commissioner of Immigration of the United States with the approval of the Secretary of Labor requires "natives of the geographically defined territory who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions to the geographical excluding clause to support such claim by evidence procured in the place of their domicile showing what their status or occupation has been during at least the two preceding years;" and that the authenticity of this evidence "shall be attested by the consular officer of the United States located nearest such place of domicile." Immigration Laws and Rules of May 1, 1917, Fifth Edition, December 1920, published by the U. S. Department of Labor.

It is quite clear, however, that these rules could not have been intended to apply to natives of continental Asia returning to American territory after an absence therefrom of less than two years; and it appears from the record that Sukhrani, one of the petitioners in the instant case, was returning to Manila after an absence from the Islands of only about sixteen months (Record, page 13).

It is to be observed furthermore that these rules are not in force in the Philippine Islands, wherein

the Act of Congress is enforced, not by the "Bureau of Immigration and the Immigration Service" of the United States, but by the "officers of the general Government thereof" (Section 1, Act of Feb. 5, 1917); that no such rule has been promulgated by the "officers of the general government" of the Philippines; that the immigration officers at Manila did not base their deportation order against the petitioners on their failure to comply with any such rule; and that in the absence of a rule of this kind duly adopted and promulgated, neither the courts nor the immigration officers of the Philippine Islands are authorized under the law to demand a particular form of evidence in support of an immigrant's claim of exemption, as a member of one of the excepted classes, provided he submits satisfactory and convincing proof, in some other form, of his status or occupation at the time of his arrival in the Islands.

The record discloses that one of the petitioners, Lekhraj, was returning to the Philippine Islands, where he had formerly resided for about nineteen years, after an absence of about three years; that another of the petitioners, Sukhrani, was returning to the Islands, where he had formerly resided for more than three years, after an absence of about sixteen months; that Sukhrani had gone to his home in India on vacation and for his health; that both of these petitioners had been formerly engaged in mercantile pursuits, as salesmen, in the very silk-shop or bazaar in Manila to which they were returning as industrial partners, after the death of the former proprietors, under Articles of partnership with their heirs, "the genuineness of which is not questioned:" and that these two to-

gether with another industrial partner, were to act as managers of the store in which they had an interest as industrial partners (Record, pages 10-12).

It is urged on behalf of these petitioners, that the omission from the record of evidence as to their status as merchants in the country of their origin, did not furnish sufficient ground for the total disregard by the Supreme Court of the Philippine Islands, under an arbitrary rule, of the unchallenged evidence clearly establishing their status as merchants at the time when they returned to the Islands, and applied for admission as members of one of the classes excepted from the general provisions of the exclusion laws of the United States.

The Rulings by the Immigration Officials.

The Immigration Officers based their orders for the deportation of the petitioners on grounds wholly different from those upon which these orders were sustained by the Insular Supreme Court.

Their rulings, and the report of the proceedings had before the Examining Board, clearly disclose that these officers were of opinion that the evidence submitted by the petitioners, showing that they are industrial partners of a mercantile co-partnership, furnishes affirmative proof that the petitioners are not merchants as that term is used in the Act of Congress (Record, page 14).

These rulings were unqualifiedly reversed by the Court of First Instance of Manila, and the Insular Supreme Court did not challenge the correctness of the reasoning upon which the inferior court

rested its opinion in this regard, but reversed the judgment of that court and sustained the deportation orders on the grounds hereinbefore indicated (Record, pages 21, 23).

No doubt the immigration officers fell into error as a result of their misapprehension of the true meaning and connotations of the word *industrial* as it appears in the legal and technical term "industrial partner." They evidently conceived the idea that a partner described in the articles of partnership as an industrial partner, is not a general partner in the co-partnership with a separate individual interest in the business; but, rather, one who merely contracts to give his work or labor to the enterprise, and, as such, a *laborer* as that term is used in the Chinese immigrations laws, and therefore not entitled to admission to any territory of the United States as a member of one of the excepted classes.

But such loose reasoning rests on a manifest misconception of the Philippine statutes defining the technical and legal status of an industrial partner in a mercantile co-partnership, and of the American statute providing for the admission to American territory of continental Asiatics of the merchant class.

The Philippine Commercial Code recognizes and defines two classes of partners who may enter into a mercantile co-partnership:—*socios capitalistas* (capitalist partners) and *socios industriales* (industrial partners). The former are those who furnish the capital to the enterprise. The latter those who furnish no capital but lend their skill, their time, their experience and their services to the joint undertaking. Under the Code all are alike

partners, though their rights and obligations may and will vary within the limits prescribed by law, in accord with the terms of the articles of partnership. Code of Commerce, Philippine Islands, Book II, Title 1, Section Second.

There is nothing contained in this classification of the members of a co-partnership which sustains a ruling that an industrial partner in a commercial co-partnership is not a merchant as that term is used in the immigration laws of the United States. The mere fact that he furnishes no capital to the enterprise cannot have that effect, and the fact that he furnishes his services to the undertaking does not make him any the less a merchant as that term is used in the Act of Congress, if the services rendered are such as are ordinarily and usually performed by a member of the merchant class.

It is not contended that the mere fact that he is an industrial partner of a commercial enterprise constitutes in itself, proof that he is a merchant, as that term is used in the immigration laws of the United States. But where it appears, as it does in the instant case, that one is an industrial partner in a mercantile co-partnership, carrying on the business of a silk merchant, buying and selling silks, and that the services required of him as such industrial partner are those of manager and salesman, a ruling that such industrial partner is not a merchant, as that term is used in the immigration laws of the United States, because he is bound to work or labor for the partnership of which he is a member, is manifestly founded upon a misconception of the true meaning and intent of these laws.

The manager of a great department store in the

city of Chicago, or a salesman in a silk-store on the Escolta, in Manila, who forms a partnership with the widow and heirs of the deceased proprietor, is none the less a merchant, because he furnishes no capital to the undertaking, but, in lieu of capital, furnishes his services, and, by his unremitting work and labor, increases the value of the business four-fold.

The rights and obligations of industrial partners in a mercantile co-partnership were exhaustively considered and discussed by the Supreme Court of the Philippine Islands in the case of Compania Maritima vs. Munoz et al., 9 Phil. Rep., 326.

The following extract from the elaborate opinion in that case, prepared by Mr. Justice Willard, makes very clear the fallacy of the ruling of the immigration officers:

> "In limited partnerships the Code of Commerce recognizes a difference between general and special partners, but in a general partnership there is no such distinction—all the members are general partners. The fact that some may be industrial and some capitalist partners does not make the members of either of these classes alone such general partners. There is nothing in the Code which says that the industrial partners shall be the only general partners, nor is there anything which says that the capitalist partners shall be the only general partners."

"Article 127 of the Code of Commerce is as follows":

"All the members of the general co-partnership, be they or be they not managing partners

of the same, are liable personally and *in solidum* with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof."

"Do the words 'all the partners' found in this article include industrial partners? The same expression is found in other articles of the Code. In Article 129 it is said that if the management of the partnership has not been limited by special act to one of the partners, all shall have the right to participate in the management. Does this mean that the capitalist partners are the only ones who have that right, or does it include also industrial partners? Article 132 provides that when in the articles of partnership the management has been intrusted to a particular person, he cannot be deprived of such management, but that in certain cases the remaining partners may appoint a co-manager. Does the phrase 'remaining partners' include industrial partners, or is it limited to capitalist partners, and do industrial partners have no right to participate in the selection of the co-manager? Article 133 provides that all the partners shall have the right to examine the books of the partnership. Under this article are the capitalist partners the only ones who have such right? Article 135 provides that the partners cannot use the firm name in their private business. Does this limitation apply only to the capitalist partners or does it intend also to industrial partners? Article 222 provides that

a general partnership shall be dissolved by the death of one of the general partners unless it is otherwise provided in the articles. Would such a partnership continue if all the industrial partners should die? Article 229 provides that upon a dissolution of a geneal partnership it shall be liquidated by the former managers, but if all the partners do not agree to this, a general meeting shall be called, which shall determine to whom the settlement of the affairs shall be intrusted. Does the phrase 'all the partners' include industrial partners or are the capitalist partners the only ones who have a voice in the selection of a manager during the period of liquidation? Article 237 provides that the private property of the general partners shall not be taken in payment of the obligations of the partnership until its property has been exhausted. Does the phrase 'general partners' include industrial partners?'

"In all of these articles the industrial partners must be included. It cannot have been intended that, in such a partnership as the one in question, where there were two industrial partners and only one capitalist partner, the industrial partners should have no voice in the management of the business when the articles of partnership were silent on that subject; that when the manager appointed mismanages the business the industrial partner should have no right to appoint a co-manager; that they should have no right to examine the books; that they might use the firm name in their private business or that they should have no voice in the liquidation of the business after

dissolution. To give a person who contributed no more than say, five hundred pesos, these rights and to take them away from a person who contributes his services, worth, perhaps, infinitely more than five hundred pesos, would be to discriminate unfairly against industrial partners."

"If the phrase 'all the partners' as found in the articles other than Article 127 includes industrial partners then Article 127 must include them and they are liable by the terms thereof for the debts of the firm."

As to the petitioner Tulsidas:

We admitted at the outset that the evidence of record as to the status of the petitioner Tulsidas, falls far short of being as satisfactory and convincing as that submitted by Lekhraj and Sukhrani.

A newcomer to the Islands, his own uncorroborated statements as to his occupation in the country from which he came, which were not readily subject to verification or contradiction at the port of his arrival in American territory, lack much of what might fairly and reasonably have been required of him by the Philippine Immigration Officers, had any doubt or question arisen as to the truth and accuracy of his testimony.

Furthermore, the admitted fact that he has no right to participate in the management and supervision of the business in which he claims an interest as an industrial partner, other than the right of supervision secured to all industrial partners in commercial co-partnerships under the Commercial Code of the Philippines (supra, page),

substantially weakens his claim to the status of a merchant as that term is construed and applied by the Immigration Officers of the United States.

Nevertheless, accepting his testimony as the truth, it sufficiently and affirmatively appears, upon the whole record, that he is one of seven industrial partners, who, under articles of partnership the genuineness of which has not been drawn in question, have undertaken to carry on an established mercantile business in the Philippines for a share of the profits; that his duties as such industrial partner are those of a salesman; that for some years prior to his coming to the Islands he had been a salesman in India, and as such a member of the merchant class, lacking only an interest in the business to which he gave his services, to be entitled to recognition as a merchant under the Immigration Laws of the United States; that at the time of his arrival in the Islands he had acquired such an interest in an established business in Manila; that his name appears in the articles of partnership under which that business is conducted; and that although he does not participate in the management of the business, he is entitled to exercise a substantial degree of supervision over the conduct of its affairs under the provisions of the Commercial Code of the Philippines.

In his behalf, we submit that these facts sufficiently and affirmatively disclose that, at the time of his arrival in Manila, he was lawfully entitled to admission to the Philippine Islands, as a merchant, under the provisions of Section 3 of the Immigration Act.

Had the Immigration Officers challenged the truth and accuracy of the testimony upon which

the foregoing recitation of facts is based, this Court might well decline to issue the writ as prayed by this petitioner, despite the manifest error of the rulings upon which he was denied a landing on American territory. But it clearly appears that the Immigration Officers accepted the facts relied upon by the petitioner as true, and based their deportation order on an erroneous ruling that these facts negatived his claim to the status of a merchant under the Immigration Act.

It is respectfully submitted that despite the relative weakness of the evidence on behalf of Tulsidas, as compared with the evidence submitted on behalf of his co-petitioners Lekhraj and Sukhrani, it is sufficient under all the circumstances of this case, to maintain his prayer for a writ of certiorari, and, upon the merits, to maintain a reversal of the judgment entered in the Supreme Court of the Philippine Islands.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. [redacted] 77

DHARANDAS TULSIDAS, *et al*, *Petitioners*

vs.

V. ALDANESE, *Insular Collector of Customs*, *Respondent*

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR WRIT OF CETIORARI

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OCTOBER TERM, 1921

No. 899

DHARANDAS TULSIDAS, *et al, Petitioners*

vs.

V. ALDANESE, *Insular Collector of Customs, Respondent*

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR WRIT OF CETIORARI

STATEMENT OF THE CASE

The petitioners arrived in Manila, Philippine Islands, on September 26, 1919, on board of the Steamship "TANGO MARU" and sought to enter that country as merchants. A board of special inquiry found that they were not merchants within the meaning of the Immigration Law. The decision of the board was confirmed by the Insular Collector of Customs. Thereupon, habeas corpus proceedings were instituted in the Court of First Instance and after due consideration the decision of the customs authorities was reversed and petitioners were ordered set at liberty. On appeal, the Supreme Court of the Islands reversed the judgment of the Court of First Instance and ordered that the petitioners be remanded to the custody of the Collector of Customs for deportation.

PETITIONERS' STATEMENT OF FACTS AND ASSIGNMENTS OF ERROR

Under the heading "Grounds relied upon for the issuance of the writ," counsel states in his petition:

> "That the evidence submitted by your petitioners stands unchallenged and uncontroverted; that there was no dispute in the court below as to the facts upon which your petitioners base their contention that they are merchants within the meaning of Section 3 of the Act; that the undisputed testimony of the witnesses, read together with the articles of partnership, discloses that your petitioners are industrial partners of the firm of Wassiamall Assomall and Company, silk merchants, with their principal place of business and domicile in Manila; that the petitioners receive no salary or wages, but share in the profits; that Sukhrani and Lekhraj are former residents of the Philippine Islands, and were, while in the Islands, industrial partners of the predecessors in the business of the above-mentioned co-partnership, the former having been absent in India for about 16 months following a residence in the Islands of about three years, and the latter having been absent in India for about three years following a residence in the Islands of about 19 years; that the occupation of your petitioners set out in their passports is that of salesmen; that as industrial partners of the above-mentioned firm they will perform the duties of salesmen and of sub-managers; and that the articles of co-partnership submitted as evidence were executed in pursuance of a reorganization of the firm after the death of some of the pormer partners."

Counsel insists that the Insular Supreme Court erred—

(1) In basing its judgment on a ruling that the sole evidence permissible in support of the petition-

ers' claim that they are merchants is the presentation of "Section Six Certificates;" and

(2) In ruling that the petitioners must be excluded also because they failed to show that they were merchants in the country from which they came; and that

(3) The ruling of the Board of Special Inquiry and of the respondent Collector of Customs, that an industrial partner in a Philippine mercantile co-partnership, who gives his services to the business as salesman or manager, is not a merchant as that term is used in the Immigration Act, was based upon such a manifestly erroneous construction and misconception of the Act of Congress and the laws of the Philippine Islands touching commercial partnerships, that the Courts of the Philippine Islands and this Honorable Court may and should review and reverse in habeas corpus proceedings, the order of the respondent detaining, and directing the deportation of your petitioners."

Counsel states the law touching the jurisdiction of the courts to be as follows:

"While it is admitted that, under the express provisions of the statute, the decision of a Board of Special Inquiry, such as that now under consideration, is final, when affirmed on administrative appeal (Act February 5, 1917, Chapter 29, Section 17), nevertheless, this Honorable Court and the Courts of the Philippine Islands may review the decision of such administrative officers, in habeas corpus proceedings, when it is alleged and shown that they have abused the power and discretion conferred upon them, or that they *rested their conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record.*"

In the memorandum brief filed by counsel in support of the petition the questions are presented in the following order: (a) Section Six Certificates; (b) "natives" of the bared zone are not required to prove in *every* instance that they are merchants in their domicile of origin—Subdivision 3 of Rule 8 of the Immigration Rules is not applicable to the Philippine Islands; and (c) evidence as to the status of petitioners as industrial partners of the firm of Wassiamall Assomall and Company of Manila.

We propose to present our views in this order: (1) The evidence was not sufficient to convince the Insular Customs Officers that the petitioners were industrial partners in the above mentioned firm; (2) industrial partners are not merchants within the meaning of Section 3 of the Immigration Act of February 5, 1917; and (3) the power of this court to review judgments and decrees of the Insular Supreme Court—this court will not order up a correct judgment for review.

ARGUMENT

At the outset, it may be stated that the issues are clarified by the petitioners themselves, in that they admit that their sole and only right to enter the Philippine Islands rests upon their claim that they are industrial partners of the firm of Wassiamall Assomall and Company, silk merchants domiciled in Manila, Philippine Islands. They do not claim that they are merchants in their domicile of origin, nor that the firm of Wassiamall Assomall and Company has or had any branch establishments anywhere outside of the Islands in which they are now or ever have been in any wise interested. Nor do they claim that they were not given a fair and full hearing before the Insular Customs Officers.

We will inquire first whether the petitioners were, at the time they sought to enter the Philippine Islands, industrial partners of the firm of Wassiamall Assomall and Company. The evidence before the Customs Officers consists of the testimony of the petitioners, their passports and the "Articles of Partnership" executed in Hong Kong on September 19, 1919.

Dharandas Tulsidas, nineteen years of age, who was entering the Philippine Islands for the first time, testified that "I am coming as a partner of Wasumul and Asumul Store. I will get a part of the profits. I was a partner of this firm already in India in 1915. I have been connected with the firm in Manila since January 1, 1919." He presented the partnership agreement to corroborate his last statement.

Naraindas Lekraj, forty-five years of age, testified that he left the Philippine Islands in December, 1915, for India, having lived in the Islands for 19 years; that he is now and has been since 1909 an industrial partner of the firm of Wassiamall Assomall and Company; that he was such partner during his absence; that he is now going to be one of the managers; that the store is now owned by five heirs; and that the one signing the "agreement" was authorized by the other heirs. He presented a passport issued at Manila on December 3, 1915, by the British Consul General.

Allumul Hakumul Sulchrain, twenty-seven years of age, stated that he had lived in the Philippine Islands for three years, leaving there for India about 16 months ago; that he became an industrial partner of the firm of Wassiamall Assomall and Company in Manila in 1916; that he will be a salesman and manager in that store; that he has the agreement, which was signed in Hong Kong on Septem-

ber 19, 1919, to show that he is a partner; that there are eleven persons in that agreement; and that there are five managers in Manila and three outside of the Islands in Hong Kong. His passport was issued at Karachi on March 20, 1919.

The first paragraph of the "Partnership Agreement" reads as follows:

> "This agreement made at Hong Kong, this nineteenth day of September, One thousand nine hundred and nineteen by and between TOPANDAS WASSIAMALL of Hyderabed Sind, Merchant—WATOOMAL WASSIAMALL, SHAMDAS HIRANAND, GANGARAM TILOKCHAND—and DHALOOMAL NONOOMAL the members of the existing firm of * * * 'Wassiamall Assomall & Co.' to be known as the capitalist partners, parties of the first part and WASSIAMALL ASSOMALL, NARAINDOS LEKHAJ, ALLUMAL HAKUMAL, KISHINCHAND DULTRAM, JHAMANDAS DEWANDAS and GAGANDAS ROCHIRAM and DHARMDAS TULSIDAS now residing at Hong Kong, to be known as industrial partners, parties of the second part."

It is therein declared that the "said parties have agreed, and by these presents do agree, to associate themselves as co-partners" for the purpose of buying and selling goods; that the principal place of business shall be Manila or such other place as the business may hereinafter be transferred; that this contract *shall relate to this particular* store and business only; that the existence of this co-partnership shall relate back to January 1, 1919, from which date the books have been kept; and that the industrial partners agree that other and further industrial partners may be admitted to the firm.

The only indication in the "partnership agreement" that the petitioners, or either of them, ever had any con-

nection with the firm of Wassiamall Assomall and Company prior to September 19, 1919, is the statement that "the existence of this co-partnership shall relate back to January 1, 1919, from which date the books thereof have been kept." Not one of the petitioners is named as a partner or as ever having been a partner prior to the execution of the document. In fact, the above quoted paragraph of the agreement, after naming the capitalist partners, says that they are "the members of the existing firm of Wassiamall Assomall and Company," and that the petitioners are "to be known as industrial partners." If the petitioners had been members of that firm during the time claimed by them they would have been mentioned as "members of the existing firm."

The testimony of the petitioners, read together with the articles of partnership, if accepted as true, disclose at most that it was the intention of all the parties that the petitioners would become industrial partners of that mercantile firm after they had entered the Philippine Islands. The young man, Tulsidas, said that "he was coming as a partner and *will get a part of the profits,*" and the "agreement" discloses that the parties have agreed and do agree "to associate themselves as co-partners." The petitioners could not enter upon the execution of their part of this contract until after their arrival in Manila, where the only business affected by the contract was located, and where they could render services as industrial partners.

There is another view of the case to be gathered from the reading of the cold record, and that is the one involved in the question as to whether or not the "partnership agreement" was entered into by the parties in good faith. Was it a scheme gotten up for the purpose of evading the prohibitory provisions of the Immigration

Act of February 5, 1917 (39 Stat., 874)? The document certainly bears many ear-marks to that effect. A comparatively small mercantile concern, with five capitalist partners, takes in six industrial partners at one time and provides the means for taking in an unlimited number of other industrial partners. The activities and interest of the six new industrial partners, three of whom are the petitioners, are limited to the Manila store. They have no interest in any other business of the firm if it has establishments elsewhere. No attempt whatever was made to explain the provisions in the "agreement" that the existence of this co-partnership shall relate back to the 1st day of January, 1919, "from which date the books thereof have been kept." Did the capitalist partners mean to share the profits with the six new industrial partners from that date, although they had rendered no service?

After all, the true theory of the case is that the members of the board of special inquiry and the Collector of Customs did not believe the testimony of the petitioners and that the parties were acting in good faith when they executed the "partnership agreement." The customs officers, being men with broad experience in this line of work, saw through the scheme at once and refused to permit the petitioners to land.

The contention of counsel for petitioners that the customs officers found as a fact that the petitioners were industrial partners of the firm of Wassiamull Assomall and Company, or at least determined the issues upon that theory, is not supported by the record. The board found that Tulsidas had no business of his own either in India or the Philippine Islands. And in respect to the other two petitioners, the board found that they did not have

a business of their own and that "in reality they are salesman" in the store of Wassiamull Assomall and Company. The Collector ruled that the petitioners "failed to show that they belong to any of the exempt classes under Section 3 of the Act of February 5, 1917." It is true that the board stated that "industrial partners are not merchants within the meaning of the Immigration Law," but it did not find that the petitioners or either of them were such industrial partners.

If we are correct in our view touching the action of the administrative authorities, there was no abuse of the power and discretion conferred upon them, nor did they base their "conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record."

In *Chin Yow* v. *United States,* 208 U. S. 8, the court said:

> "It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not, and, by way of caution we may add that jurisdiction would not be established simply by proving that the Commissioner and the Department of Commerce and Labor, did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced. * * * But unless and until it is proved to the satisfaction of the Judge that a hearing properly so called was denied, the merits of the case are not open, and we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

In *Chin Sing Quon* v. *United States,* 231 Fed. Rep. 948, the Circuit Court of Appeals held on March 14, 1916, that—

> "The question was one of fact and even if we might have reached a different conclusion if we had heard the testimony in the first instance, the assumption furnishes no reason for a reversal."

In *Tan Puy* v. *The Insular Collector of Customs*, 36 Phil. Reps. 900, the court said:

> "It has been repeatedly held that the immigration officials are not required to accept, as true, statements made to them by applicants for admission into the territory of the United States, nor the witnesses presented in their behalf, even though such testimony should be given under oath."

Where it is shown that the witnesses were disbelieved arbitrarily and capriciously and that the probative force of real documentary evidence was disregarded, it could readily be concluded that the parties had not been given a free, full and fair hearing because such a hearing does not only consist of an opportunity to present one's case but in reality it is something more. The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the customs officers to consider it, is vain. Such a right is futile if the persons to whom the evidence is presented can thrust it aside without notice or consideration. But the duty to duly and deliberately consider the evidence does not impose the obligation to decide right as others may conceive the right to be.

In the case at bar, no reason can be advanced nor errors pointed out which even indicate that both the Board and the Collector of Customs did not give due consideration to all the evidence presented. The fact that the Board and the Collector did not believe that the witnesses were

telling the truth and that the articles of partnership were made in good faith do not indicate a lack of due consideration, because no other reasonable conclusions could be reached. The record certainly would not justify a holding that these officers acted in the least arbitrarily or capriciously, especially when it is remembered that the Board had the right to take into consideration the personal appearance and characteristics of the petitioners in weighing the evidence, it being well known that there is a marked difference in this respect between the merchant and laboring classes of Indians. The result is that the administrative officers did not abuse the power and discretion conferred upon them in rendering the decisions complained of. The courts are therefore without authority to review those decisions.

INDUSTRIAL PARTNERS ARE NOT MERCHANTS

If it were true that the evidence of record is sufficient to establish the claim of the petitioners that they are industrial partners of the firm of Wassiamall Assomall and Company, and if it be conceded that such was the finding and understanding of the customs officers, as is urged by counsel for petitioners, the result would be the same for the reason that industrial partners are not merchants within the meaning of Section 3 of the Immigration Act of February 5, 1917.

Article 1 of the Code of Commerce in force in the Philippine Islands provides "That the following are merchants for the purposes of this code: (1) Those who, having legal capacity to trade, devote themselves thereto customarily;" and (2) "Commercial or industrial associations which are formed in accordance with this code."

Persons who by chance make some commercial transactions can not be considered merchants (Decisions of the Supreme Court of Spain of March 16, 1870, and December 12, 1889). A legally formed commercial co-partnership may consist of both capitalist and industrial partners (Art. 138 of the Code of Commerce). Industrial partners can not engage in other transactions except by the express consent of the partnership. The recording of the articles of partnership in the mercantile registry perfects the partnership organization and makes all the signers thereof partners. Both capitalist and industrial partners are liable to third persons for the debts and obligations contracted by the partnership (*La Compania Maritima* v. *Munoz, et al.*, 9 Phil. Reps. 326), unless otherwise provided in the articles of agreement (*Criado* v. *Gutierez Hermanos*, 37 Phil. Reps. 883). The articles of agreement executed in Hong Kong on September 19, 1919, purport to create an ordinary general mercantile partnership under the firm name of "Wassiamall Assomall and Company" and provided that the profits and losses shall be distributed as stated in paragraphs 8 and 9 thereof. The direction, control and management of the firm and the right to use the firm name were vested "solely and exclusively" in the capitalist partners.

By Article 4 of the Code of Commerce it is provided, as one of the conditions of legal capacity to engage in commerce or acquire the status of a merchant, that the person must have reached the age of 21 years. While Article 15 provides that foreigners may engage in commerce in the Philippine Islands, subject to the laws of their own country, the petitioner Tulsidas, who was only 19 years of age at the time he sought to enter the Islands, did not attempt to show what that law is in his home

country. Clearly, therefore, Tulsidas is not entitled to enter the Islands for the reason that he cannot acquire a mercantile status in that country.

Counsel admits that if the services which an industrial partner is obligated to render are not such as are usually performed by merchants, the mere fact that he is an industrial partner of a commercial enterprise will not constitute proof that he is a merchant within the meaning of the Immigration Act; but counsel insists that the services which the petitioners were obligated to perform, "carrying on the business of a silk merchant, buying and selling silks," are in fact services rendered by the ordinary merchant. Upon this point counsel apparently has overlooked the important provisions of the articles of agreement that the direction, control and management of the firm and the right to use the firm name were vested solely and exclusively in the capitalist partners. Article 128 of the Code of Commerce provides that the partners not duly authorized to make use of the firm's signature "shall not make the company liable through their acts and contracts, even though they execute them in the name of the latter and under its signature." The petitioners under the articles of agreement are not authorized to do any *buying* of silks. Their duty is confined to the selling of silks and such other ordinary labor as is required by establishments of this kind. Consequently if the petitioners had landed and had entered upon the execution of their contract, they would not be "engaged in *buying* and selling merchandise."

The term "merchant," as defined by the Philippine Legislature for the purposes of internal revenue, "means a person engaged in the sale, barter, or exchange of personal property of whatever character" (Sec. 1459, Administra-

tive Code, 1917). Under this definition a person to be a merchant must be "engaged" in the sale, barter, or exchange of personal property. To be "engaged," he must be occupied or employed in that work.

Coming now to the Immigration Act of February 5, 1917, it will be noted that natives of India are, with certain exceptions, absolutely excluded under the so-called latitudinal and longitudinal clause of Section 3 thereof. The exceptions are "Government officers, * * *, merchants, * * *, and their legal wives and children under 16 years of age." As the law contains these express exceptions, none other can be implied in its enforcement. The Department of Labor of the United States has defined the term "merchant" as it is used in Section 3 as follows:

> "A merchant is a person engaged, in good faith, in buying and selling merchandise, at a fixed place of business, which business is conducted in his name and under his supervision, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his buisness as such merchant."

Section 2 of the Act of November 3, 1893 (28 Stat. 7) being an act entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May 5, 1892," defines the term "merchant" as follows:

> "The term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is con-

ducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

The two definitions are essentially the same. That of the Department of Labor requires "good faith" and that the business must be conducted under the person's supervision—two elements not found in the Congressional definition. As the Immigration Act of February 5, 1917 neither defines the term "merchants" nor states the nature, character or kind of evidence required to establish an immigrant's status as a merchant, some aid may be derived from an examination of the history of the immigration legsilation and the Chinese exclusion laws touching the questions whether Congress intended to give to the term "merchants" as therein used, the same meaning as that set forth in Section 2 of the Act of November 3, 1893, and to guard against evasions of the prohibitory provisions of the Act of February 5, 1917, by requiring a high grade of proof in order to establish a status or occupation which would place the person or persons in one of the privileged classes, such as is required in cases of Chinese persons and persons of Chinese descent.

IMMIGRATION LAWS

Title 29 of the Revised Statutes of the United States contains the law in respect to immigration, as compiled and re-enacted effective December 1, 1873. While cooly trade and the building and operation of vessels for that purpose were prohibited, no prohibition existed against the voluntary immigration of even oriental subjects. Real restrictive provisions appear for the first time in the

Act of March 3, 1873 (18 Stat. 477) when the immigration of certain convicts, and of women for purposes of prostitution was forbidden. The Act of August 3, 1882 (22 Stat. 214) extended the prohibition to any "convict, lunatic, idiot, or any other person unable to take care of himself or herself without becoming a public charge." The Act of February 26, 1885 (23 Stat. 332, 333) marks the beginning of the legislation prohibiting the importation and migration of contract labor. That act applied to all aliens and foreigners except (a) private secretaries, servants and domestics for foreigners temporarily residing in the United States; (b) skilled workmen to perform labor upon any new industry not then established in the United States, provided skilled labor for that purpose could not be otherwise obtained; and (c) professional actors, artists, lecturers, singers, and personal and domestic servants. The Act of March 3, 1891 (26 Stat. 1084) again extended the prohibition so as to include other undesirable aliens, and amended the Act of February 6, 1885, by providing that the contract labor provisions should not apply to "members of any religious denomination nor persons belonging to any recognized profession, nor professors for colleges and seminaries," and by extending those provisions to relatives and personal friends. The Act of March 3, 1893 (27 Stat. 569) was enacted for the purpose of facilitating the inforcement of the then existing immigration and contract labor laws. The Act of March 3, 1903 (32 Stat. 1213) included other undesirable aliens not theretofore excluded, enlarged the list of persons to which the contract labor provisions should not apply and provided for the deportation of aliens found to be unlawfully in the United States. The Act of February 20, 1907 (34 Stat. 898) repealed the Act of

March 3, 1903, except Section 34 which dealt with a different subject, but the provisions of the repealed sections were therein re-enacted with some changes and additions. The excluded classes were extended. The importation of skilled labor was authorized, provided labor of like kind unemployed could not be found in this country. The classes of persons to which the contract labor provisions did not apply were somewhat enlarged.

The Act of February 5, 1917 (39 Stat. 874) is "An Act to Regulate the Immigrations of Aliens to, and the residence of Aliens in, the United States." The first section defines the word "alien" as therein used. The second section provides for the imposition of a head-tax and the collection of the same. The third section further enlarges the classes of aliens excluded for the general welfare of the United States, and declares:

> "That the following classes of aliens shall be excluded from admission into the United States: * * *; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel of latitude, north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependence situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering the United States shall

be admitted to the United States. The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act."

Section 38 repeals the Act of March 26, 1910, amending the Act of February 20, 1907, except Section 34 thereof; and all other acts and parts of acts inconsistent with the Act; *"Provided,* that this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, except as provided in Section 19 hereof, nor to repeal, alter, or amend Section 6, Chapter 455, 3d Session, 58th Congress, approved February 6, 1905, nor to repeal, alter or amend the act approved August 2, 1882, and amendments thereto, except as provided in Section 11 hereof."

CHINESE EXCLUSION LAWS

In the fifth article of the treaty between the United States and China, concluded in July, 1868, known as "The Burlingame Treaty," the high contracting parties declared that "they recognized the inherent and inalienable right of man to change his home and allegiance, and also

the mutual advantages of the free migration and emigration of their citizens and subjects respectfully from the one country to the other, for purposes of curiosity, of trade, or as permanent residents." By the sixth article, the "most favored nation's" privileges, immunities, and exemptions were extended to the citizens of each while in the country of the other. Upon the application of the United States, a supplementary treaty was concluded in November, 1880, in which China agreed that the Government of the United States may regulate, limit, or suspend the coming of Chinese laborers to the United States, provided that "the limitation or suspension shall be reasonable, and shall apply only to Chineses who go to the United States as laborers." It was further agreed by both parties that "Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body or household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, * * *." The Act of May 6, 1882 (22 Stat. 58) was framed in conformity with the provisions of this supplementary treaty. Section six of that act prescribed a mode of proof, now known as "Section-six certificate," which was intended to prevent the evasion of the prohibition against the coming of Chinese laborers into the United States. The amendatory act of July 5, 1884 (23 Stat. 115) enlarged the terms of that certificate and provided that it "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States." The absolute exclusion of Chinese laborers was prescribed by the Act of October 1, 1888 (25 Stat. 504), Chinese Exclusion Case, 130 U. S. 581. The Act of April 29, 1902

(32 Stat. 176), as amended by the Act of April 27, 1904 (33 Stat. 428), re-enacted, extended, and continued in force without modification, limitation, or condition, all the laws on this subject which were in force on the last mentioned date.

It will thus be seen that there has been a constant tightening of the reins in respect to the immigration of Chinese, and that the purpose and intent of the law as it stands today are to absolutely prevent the coming into the United States of Chinese laborers, skilled or unskilled, and to require a very high class of evidence, section-six certificates, of every one, with few exceptions, who claims to belong to one of the exempt classes before he is permitted to enter this country or its possessions.

IMMIGRATION LAWS AND CHINESE EXCLUSION LAWS CONSIDERED TOGETHER

The Act of February 5, 1917, and the Chinese Exclusion Laws constitute comprehensive legislation on those subjects. Broadly speaking, all legislation touching these matters rests upon the well recognized principle of international law that any independent nation may, in the exercise of its inherent powers of sovereignty, prohibit the entrance of foreigners into its territory, or prescribe the conditions under which they shall be allowed to enter and remain, temporarily or permanently.

All laws, except the Act of February 5, 1917, enacted on the subject of immigration have been of a selective rather than restrictive character. The grounds of exclusion, except those provisions relating to contract labor, was based largely on the personal characteristics, or moral, physical or mental defects of the individual seeking admission into the United States, the main object be-

ing the promotion of the health, morals, and general welfare of the people along these lines, and not so much the enactment of economic measures. The contract labor provisions partake more of the latter character. The selective features of prior acts were not only retained in the Act of February 5, 1917, but were strengthened and supplemented with the addition of a few excluded classes. The application of the immigration laws to Chinese aliens, from and including the Act of March 3, 1903, is well settled, although the operation of the Chinese exclusion laws is not affected thereby (*United States* v. *Wong You,* 223 U. S. 67.)

A very concise and comprehensive statement of the treaties entered into by the United States and China up to and including that of 1880 and the causes which brought about the enactment of the Chinese Exclusion Laws is set forth in the decision rendered in the case of *Chae Chan Ping* v. *United States,* 130 U. S. 581. After pointing out that the discovery of gold in California in 1849 was followed by a large immigration thither from all ports of the world, and particularly China, which gave rise to a competition between Chinese immigrants of the laboring class and our people, which soon assumed proportions dangerous to the public peace, the Court proceeds:

> "The competition steadily increased as the laborers came in crowds on each steamer that arrived from China, or Hong Kong, an adjacent English port. They were generally industrious and frugal. Not being accompanied by families, except in rare instances, their expenses were small; and they were content with the simplest fare, such as would not suffice for our laborers and artisans. The competition between them and our people was for this reason altogether in their favor, and the consequent irri-

tation, proportionately deep and bitter, was followed, in many cases, by open conflicts, to the great disturbance of the public peace.

"The differences of race added greatly to the difficulties of the situation. Notwithstanding the favorable provisions of the new articles of the treaty of 1868, by which all the privileges, immunities, and exemptions were extended to subjects of China in the United States which were accorded to citizens or subjects of the most favored nation, they remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people or to make any change in their habits or modes of living. * * *."

The above-quoted provisions of Section 3 of the Act of February 5, 1917, constitute a real and effective Asiatic Exclusive Law. The "natives" of the territory within the designated boundaries are all, when considered as a class, excluded. Only those are entitled to enter who are expressly allowed. Those native, like the Chinese, can live cheaply. They are content with the simplest fare. The laboring classes come to this country without bringing with them their families. On account of their personal characteristics, habits, customs and training, assimilation with Americans is out of the question.

The United States Department of Labor, Bureau of Immigration, in its rules of May 1, 1917 (second edition, Nov., 1917, page 42) for the guidance of those administrative officials concerned in the administration of the Act of February 5, 1917, directs that:

"Subd. 3. *Proof of exemptions.*—Natives of the geographically defined territory who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions to the geographical ex-

cluding clause shall present in support of such a claim evidence procured in the place of their domicile showing what their status or occupation has been during at least the two preceding years. Such evidence must be of a convincing nature, and its authenticity shall be attested by the consular officer of the United States located nearest such place of domicile. * * *."

As it is clear that the objects sought to be accomplished by the enactment of the "Asiatic Exclusion Law" and the Chinese exclusion laws were exactly the same—the gradual raising and not the lowering of our economic level—it necessarily and logically follows that Congress intended that the term "merchants" as used in Section 3 of the Act of February 5, 1917, should be given its ordinary and accepted meaning, which is that or substantially that given in Section 2 of the Act of November 3, 1893, or that given by the Department of Labor, and to require convincing evidence that each immigrant belongs to one of the privileged classes before he should be permitted to land. If we are correct upon this branch of the case, the petitioners have fallen far short of showing that they are merchants within the meaning of Section 3 of the Act of February 5, 1917, even if it be admitted that they were industrial partners of Wassiamall Assomall and Company at the time they sought to enter the Philippine Islands.

POWER OF THIS COURT TO REVIEW JUDGMENTS AND DECREES OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Section 27 of the Act of August 29, 1916 (39 Stat. 555) which is substantially a re-enactment of Section 10 of the Act of July 1, 1902 (39 Stat. 695) provides that the Supreme Court of the United States shall have juris-

diction to review the final judgments and decrees of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute or treaty of the United States is involved, or in cases in which the value in controversy exceeds $25,000, on appeal or writ of error by the party aggrieved. Section 5 of the Act of September 6, 1916 (39 Stat. 727) provides that no judgment or decree of the Supreme Court of the Philippine Islands shall be reviewed by the Supreme Court of the United States upon writ of error or appeal; but it shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination any cause wherein the Supreme Court of the Philippine Islands may render a judgment "which would be subject to review under existing law."

Thus, the power of this court to review the judgments and decrees of the Supreme Court of the Philippine Islands is limited by positive law to two general classes of cases. In the one, it is the nature of the case, and in the other it is the amount involved, which is the test of jurisdiction in every instance. If a particular case falls within one or the other of these classes, the inquiry then arises "whether the matter is of sufficient importance in itself, and sufficiently open to controversy, to make it the duty of this court to issue the writ applied for in order that the case may be reviewed and determined as if brought here on appeal or writ of error" (*Law Ow Bew, Petitioner*, 141 U. S. 583, 587.)

It is strongly urged that the Immigration Act of February 5, 1917, is really and substantially involved in the case at bar for the reason that the construction placed upon that act by the Supreme Court of the Philippine Islands, to the effect that the "Section-six certificate" is

the "sole evidence permissible" to establish the petitioners' right to enter the Islands, defeated the right set up by the parties, whereas an opposite construction would have sustained that right. If this contention were well-grounded in fact, we would at once admit that the statute is "involved" within the meaning of Section 27 of the Act of August 29, 1916. But the facts are otherwise.

While it is true that the Insular Supreme Court stated that—

> "The appellees did not present the 'Section 6 certificate.' The board of special inquiry was therefore justified in disregarding all other proof relating to their occupation as merchants; * * * In the absence of 'Section six certificates' the Department of Customs was not only authorized but obliged under the law to refuse the appellees admission into the Philippine Islands. Not only did the appellees fail to furnish the 'sole evidence permissible' to establish their right to enter into the Philippine Islands, but they failed absolutely to show that they were merchants in the country from which they came * * *,"

the court also stated that

> "In fact, they (the petitioners) expressly admit that they were not merchants in their home province or municipality. Their sole contention was and is that they had entered into a partnership or association by virtue of which they were to become merchants upon their arrival in the Philippine Islands. The law does not contemplate that aliens who claim to belong to an exempted class, or aliens otherwise prohibited from entering the United States, shall be permitted to enter the territory of the United States to become merchants. The fact that they were merchants before they entered the United States is the fact that they must establish."

It is well settled that this court will not grant a writ of certiorari for the purpose of reviewing a correct judgment simply because some of the reasons given by the court below are erroneous (2 Encyclopedia of the United States Supreme Court Reports 312, and cases cited). Is the judgment of the Insular Supreme Court correct? This is the question to be determined in so far as this branch of the case is concerned, and not the soundness of the reasons upon which that judgment professes to proceed.

If it be true that the Insular Supreme Court erred in stating that in the absence of Section-six certificates the Department of Customs was "obliged under the law to refuse the appellees admission into the Philippine Islands," such a statement would be at most a non-prejudicial error because the evidence submitted does not show that the petitioners belonged to one of the privlieged classes and were therefore entitled to enter the Islands. As stated by the Insular Supreme Court, the petitioners admit that they were not merchants in their home province or municipality. "The fact that they were merchants before they entered the United States is the fact that they must establish." They can not enter the United States "to become merchants." There can be no doubt about the soundness of this holding when applied to a "native" who is seeking to enter the United States for the first time or who is not seeking to enter as a *returning merchant.* And this is what the Insular Supreme Court had in mind when it used the language just quoted. The rights of such "natives" must be determined as of the date of their application for entry—Ex parte Wu Kao, 270 Fed. 351.

While Congress has prescribed the mode of proof, Section-six certificates, for the admission of Chinese persons and has also provided for *returning Chinese merchants,*

the Act of February 5, 1917, does not, as we have said, define the term "merchants" nor prescribe the nature, character, or kind of proof necessary to establish a mercantile status in the immigrant's domicile of origin nor provide for the *return* of merchants from the bared zone. It is immaterial in so far as the case at bar is concerned, whether the rule set forth in Subdivision 3, entitled "proof of exemption," supra, is in force in the Philippine Islands or not because the petitioners are not seeking to enter that country as merchants in their domicile of origin. There can be no doubt however but that the "Officers of the general government" of the Islands have the power to adopt that rule for their guidance if they saw fit to do so. *And it will be the time to inquire whether a "returning native merchant" has the right, under the Act of February 5, 1917, to re-enter the United States or the Philippine Islands when we have a real case of that kind.*

While we agree with counsel that, "subject only to the control of this Honorable Court, the immigration officers and the inferior courts of the Philippine Islands are bound by the decisions and rulings of the Supreme Court of the Islands," we do not concur in the view that the *statements* of the Insular Supreme Court that "the sole evidence permissible in support of the petitioners' claim that they are merchants is the presentation of a Section-six certificate," and that no such certificate having been presented, "the Board of Special Inquiry was, therefore, justified in disregarding all other proof relating to their occupation as merchants," and "was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands," constitute either decisions or rulings which are binding upon the inferior courts and tribunals because such statements are nothing more than mere *obiter dicta.*

CONCLUSION

The respondent stands upon the propositions (a) that the courts are without jurisdiction to review the action of the Customs Authorities because the petitioners have failed to show any abuse of power or discretion on the part of such authorities or that they rested their conclusions on a manifestly erroneous construction or misconception of the law applicable *to the facts disclosed by the record;* (b) that this court will not grant a writ of certiorari for the purpose of reviewing a correct judgment, such as the one under consideration, although some of the reasons or statements in the opinion may be erroneous; and (c) there is no statute of the United States *involved* in these proceedings.

It is therefore respectfully submitted that the writ must be denied.

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate.
LOGAN N. ROCK,
Captain, Judge Advocate,
Attorneys for Respondent.

In the Supreme Court of the United States.

October Term, 1922

No. 77

DHARANDAS TULSIDAS, et al., *Petitioners,*

vs.

THE INSULAR COLLECTOR OF CUSTOMS, *Respondent.*

On Writ of Certiorari to the Supreme Court of the Philippine Islands

BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

This case comes here on certiorari to the Supreme Court of the Philippine Islands, which reversed the judgment of the court of First Instance of the City of Manila granting a writ of *habeas corpus.*

Counsel for the petitioners having informed us that he stands upon his brief heretofore filed in support of the petition for the writ, we proceed without further delay to present our views upon the questions therein raised and discussed.

STATEMENT OF FACTS

While we take no exception to the history of the proceedings in the tribunals below, we do not accept the statement of facts as given by counsel in part two of the petition, pages 5 and 6, or the "restated and summarized" material facts appearing on page eleven of his brief. As we intend to urge that there was no abuse of the power and discretion conferred upon the administrative authorities in the Islands in the disposition of this case, it is necessary to set forth the substance of the testimony of each one of the petitioners, no other witnesses having testified in the proceedings.

Dharandas Tulsidas, after being duly sworn, testified before the Board of Special Inquiry on October 1, 1919, substantially as follows :

> My name is Dharandas Tulsidas, I am 19 years of age, occupation a merchant, and a British Indian subject. My father and mother are of the Indo race and I came from Hydarbadsen. I have no business in India and do not have any business of my own in the Philippine Islands. My passport was given to me by the British Government and I told the British officials that I was a salesman. There is no difference in India between a salesman and a merchant, as each has a business of his own. I am coming to the Philippines as a partner of Wasumul and Asumul store. I will get a part of the profits and my work will be that of a salesman and not a manager. This is my first trip to the Philippines and the Company (Wasumul and Asumul, hereafter called the Bengal Bazaar) paid for my transportation and other expenses. I have been connected with this company, being a partner in India since 1915. "Q. How long have you been connected with this firm in Manila? A. From first of January this year, 1919." The partnership agreement says that it takes effect January 1, 1919. This agreement which was executed in Hong Kong September 19, 1919, shows that I am connected with the Company. I have nothing more to say about my claim to enter the Islands.
>
> NOTE.—This witness presented a passport issued by the Commissioner in Siend, dated April 12, 1919, and shows his occupation to be that of a salesman. (Rec. pp. 5–7.)

Naraindas Lekhraj, after being duly sworn, testified before the same Board on September 30, 1919, substantially as follows:

> My name is Naraindas Lekhraj and I am 45 years of age, occupation a merchant. I was born in Hydrobal of Indo parents. I have lived in the Philip-

pine Islands 19 or 20 years, having left here in December 1915, since which time I have resided in India. I have a business in Manila, being a partner in the Bengal Bazaar. I have invested no money in this establishment and have no money interest in it. I am now, and have been since 1909, an industrial partner in this store. Yes, I mean to say that I could continue to be such an industrial partner during my absence in India. The meaning of an industrial partner is one who has no capital invested in the firm. My trip to India was only a rest and I am returning to Manila to be one of the managers of the store, taking over the place of Bochan, who is going back to India. The owners of the store are the heirs of Wasumul and Asumul. Topandas Wasumul, having a power of attorney of the other heirs, signed the articles of agreement in Hong Kong. My only business interest is in Manila. When I applied for a passport the British Government did not ask me whether I had a business in Hederabadsen, but did ask me if I had a business in Manila. I am sure of this. I have nothing more to say about my case.

NOTE.—This witness presented an agreement made at Hong Kong on September 19, 1919, and acknowledged before the American Consul there. He also presented a passport issued at Manila by the Acting British Consul General on December 3, 1915. (Rec. pp. 10–12.)

Allumal Hakumal Sulchrain, after being duly sworn, testified before the same Board on September 30, 1919, substantially as follows:

My name is Allumal Hakumal Sulchrain, 27 years of age, occupation a silk merchant here in the Philippine Islands. My business is located on the Escolta, Manila, which is the Bengal Bazaar. I have no business in India. I have lived in the Philippine Islands for about three years, returning to India about 16 months ago. I became an industrial partner in the Bengal Bazaar in 1916. I get no salary. The owners of the Bazaar are the heirs of Wasumul and

Asumul, being two sons and three cousins, five in all. There were eleven persons in the agreement signed in Hong Kong on September 19, 1919. I will be a salesman and also a manager in the store in Manila. The present manager is Bochan but he is going home and I will become a manager. "Q. But the present manager is still in Manila therefore two managers now?" "A. We are three managers." "Q. How many managers now in Manila?" "A. Four. We are five here (managers) and three outside of the Philippine Islands. Five (managers) are here and three in Hong Kong." The partners' agreement made in Hong Kong shows that I am a partner in the store. The British officials did not ask me if I had a business in India, but did ask me if I had a business in the Philippines. I have nothing more to say.

NOTE.—This witness presented a passport issued by the Commissioner in Siend, dated March 20, 1919. (Rec. pp. 12–14.)

The first paragraph of the "Partnership Agreement," executed in Hong Kong on September 19, 1919, shows that the parties of the first part were "the members of the existing firm of Wassiamall Assomall & Co." capitalist partners, and the parties of the second part were the three petitioners and four other persons "now residing at Hong Kong, to be known as industrial partners." It further appears in the instrument, that the "said parties have agreed, and by these presents do agree, *to associate* themselves as co-partners for the purpose of carrying on the business" in the Philippine Islands; that this contract shall relate to this particular store and business only; that the "direction, control and management of this partnership is vested solely and exclusively in the parties of the first part," with power to appoint a manager or managers from the industrial partners when deemed necessary; that the "existence of this co-partnership shall relate back to the 1st day of January, 1919, from which date

the books thereof have been kept, and shall continue to exist until the first day of January, 1921, * * *"; and that the "industrial partners agree that other and further industrial partners may be admitted to the firm * * *." (Rec. pp. 15–19).

The Board of Special Inquiry held that Tulsidas was not a merchant and therefore had no right to enter the Philippine Islands. Among other things, the Board said: "His (Tulsidas') passport No. 902 issued by the Commissioner in Siend, dated at Karachi, April 12, 1919, shows that he is a salesman. In his declaration duly acknowledged before the American consul at Madras, India, he states that his employer is Wassiamull Assomull & Co." (Rec. p. 7).

In holding that Naraindas Lekhraj and Allumal Hakumal Sukhrain are not merchants and are therefore not entitled to enter the Philippine Islands, the Board of Special Inquiry said, among other things, that: "It appears that they do not have a business of their own. They claim to be partners of Wassiamull Assomull & Co., but in reality they are salesmen in that store. They claim to be industrial partners of Wassiamull Assomull & Co., but industrial partners are not merchants within the meaning of the Immigration Law" (Rec. p. 14).

On administrative appeal the Insular Collector of Customs affirmed the decisions of the Board of Special Inquiry, after considering all the facts and circumstances and after being fully advised in the premises. In thus affirming the decisions the Collector rested his judgment or action upon the ground that the petitioners "are natives of India and fail to show that they belong to any of the exempt classes under the provisions of section 3 of the Immigration Act of February 5, 1917, * * *" (Rec. p. 3).

The Judge of the Court of First Instance, in granting the writ of *habeas corpus* and ordering the petitioners liberated,

went no further into the case than to decide, after assuming that the petitioners were in fact industrial partners of the co-partnership of Wassiamall Assomall & Co., that such industrial partners are merchants within the meaning of the Immigration Act of February 5, 1917 (Rec. p. 21).

The Insular Supreme Court reversed the judgment of the Court of First Instance and affirmed the action of the customs authorities. While it is true that this high court stated that "In the absence of the section-six certificate, the Department of Customs was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands," the Court further stated that:

> "In fact, they (the petitioners) expressly admit that they were not merchants in their home province or municipality. Their sole contention was and is that they had entered into a partnership or association by virtue of which they were to become merchants upon their arrival in the Philippine Islands. The law does not contemplate that aliens who claim to belong to an exempted class, or aliens otherwise prohibited from entering the United States, shall be permitted to enter the territory of the United States to become merchants. The fact that they were merchants before they entered the United States is the fact that they must establish" (Rec. pp. 23–24).

ARGUMENT

At the outset, we may simplify the issues by freely admitting that the provisions of section six of the Act of May 6, 1882 (22 Stat. 58), as amended and enlarged by the Act of July 5, 1884 (23 Stat. 115), wherein a mode of proof, known as "Section-Six Certificate," is prescribed, which "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States," do not apply to "natives," such as the petitioners in the instant case, coming from the "barred zone" described in Section 3 of the Act of February 5, 1917

(39 Stat. 874), for those provisions, being as they are a part of the "Chinese Exclusion Laws," are applicable to Chinese persons, other than laborers, entering the United States for the first time as distinguished from those Chinese persons *returning* to the United States. A careful reading of the whole opinion of the Insular Supreme Court will show that that Court did not rest its judgment upon the failure to present "Section-Six Certificates," for the Court states that the petitioners "expressly admit that they were not merchants in their home province or municipality." *This Court will not reverse a correct judgment simply because some of the reasons given by the Court below are erroneous.*

Finality of Decisions of Board of Special Inquiry

We agree with counsel for petitioners that, under the express provisions of Section 17 of the Act of February 5, 1917, *supra,* the decisions of the Board of Special Inquiry in the instant cases, when affirmed on administrative appeal, are final; and that the courts have no power to interefere unless there was either a denial of a fair hearing, or there was an application of an erroneous rule of law.

While the petitioners do not now claim that they were not given a fair hearing, nevertheless they do insist that the Insular administrative officers "rested their conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record" (Petition p. 8), in ruling that an industrial partner in a Philippine mercantile co-partnership is not a merchant as that term is used in section 3 of the Immigration Act of February 5, 1917, *supra.* We stand upon the propositions (a) that the administrative decisions entered in these proceedings, when read in the light of all the facts and circumstances, show that the petitioners failed to submit satisfactory proof that they were in fact industrial partners of

the co-partnership of Wassiamall Assomall & Co., and (b) that if it be concluded that the petitioners were industrial partners of that firm, the general result would be the same because such partners are not merchants within the meaning of the Immigration Act of 1917.

Section 3 of the Act of February 5, 1917, *supra*, provides:

> "That the following classes of aliens shall be excluded from admission into the United States: * * *; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, * * *, or who are natives of any country, province, or dependency situate on the Continent of Asia (within certain named meridians of longitude and parallels of latitude) * * *, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provisions next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, * * *, merchants, * * *."

These provisions constitute a real and effective Asiatic Exclusion Law. The "natives" of the territory within the designated boundaries are all, when considered as a class, excluded. Only those are entitled to enter who are expressly allowed. No other exceptions can be implied in the enforcement of the law. He who claims to belong to one or the other of the privileged classes must establish his claim to the satisfaction of the "officers of the general government" of the Islands. The burden is *not* upon those immigration authorities to show that any "native" denied the right to enter does not fall within one of the privileged classes, but the burden is upon the "native" to show that he is entitled to enter because of his status or occupation. This much is conceded by counsel, for he states that, as subdivision 3 of Rule 8 of the Immigration Rules of the United

States (Rules of May 1, 1917, 7th Ed. Aug. 1922, p. 53–54) is not in force in the Philippines, neither the courts nor the immigration officers are authorized, in the absence of a rule of that kind, to demand a particular form of evidence in support of an immigrant's claim of exemption, as a member of one of the excepted classes, "provided he submits satisfactory and convincing proof, in some other form, of his status or occupation at the time of his arrival in the Islands" (Petitioners' Brief, p. 23).

The said subdivision 3 of Rule 8 provides that natives of the barred zone who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions "shall present in support of such a claim evidence procured in the place of their domicile showing what their status or occupation has been during at least the two preceding years. Such evidence must be of a convincing nature, and its authenticity shall be attested by the consular officer of the United States located nearest such place of domicile." The petitioners presented no such or like evidence that they were merchants in their domicile of origin, but based their claim of exemption exclusively upon the ground that they were industrial partners of a Philippine mercantile establishment, for they alleged:

> "That the board abused the power and discretion in them vested by holding and declaring that the petitioners being industrial partners in a mercantile concern were not merchants and hence were members of an excluded class, to wit, British Indians" (Rec. p. 2).

The immigration officials were not required to accept the sworn statements of the petitioners as true even though no contrary or impeaching testimony was adduced. Chin Yow *v.* United States, 208 U. S. 8; Tan Puy *v.* The Insular Collector of Customs, 36 Phil. Reps. 900. The record does not support Counsel's contention that those officials accepted

the testimony of the petitioners to the effect that they entered into the so-called partnership agreement in good faith as true, for, as we have pointed out, the Board in the case of Tulsidas made no mention of the claim of the immigrant being an industrial partner in the Manila concern but found that "he has no business of his own in the Philippines" or in India. And in the case of the other two petitioners the Board found that "they do not have a business of their own. They claim to be partners of Wassiamull Assomull & Co., but in reality they are salesmen in that store. They claim to be industrial partners of Wassiamull Assomull & Co., but industrial partners are not merchants within the meaning of the Immigration Law" (Rec. 14). In affirming the decisions of the Board the Insular Collector of Customs did not refer to the claim of the petitioners that they were industrial partners in the Manila store, but rested his decision upon the ground that the Board's finding to the effect that the petitioners failed to show that they belong to any of the exempt classes appears to be reasonable and proper in view of the showing made (Rec. 3).

It will thus be seen that neither the Board nor the Collector believed that the partnership agreement was executed in good faith. This document certainly bears many earmarks indicating that it formed part of a scheme gotten up for the purpose of evading the prohibitory provisions of the Immigration Act. A comparatively small mercantile concern, with five capitalist partners, takes in six industrial partners at one time and provides for taking in an unlimited number of other industrial partners. The activities of the six new industrial partners, three of whom are the petitioners, are limited to the Manila store. They have no interest in any other business of the firm if it has stores elsewhere.

The testimony of the petitioners, read together with the articles of partnership, if accepted as true, disclose at most that it was the intention of all the parties that the petitioners would become industrial partners after they had entered the Philippine Islands. The young man Tulsidas said that he was coming as a partner and "I will get a part of the profits," and the agreement shows that the parties agreed to associate themselves as co-partners. The petitioners could not enter upon the execution of their part of the contract until after their landing in Manila, where the only business affected by the contract is located and where they could render services as industrial partners.

Industrial Partners are not Merchants

If it were true that the evidence of record is sufficient to establish the claim of the petitioners that they were industrial partners of the firm of Wassiamull Assomull and Company, and if it be conceded that this was the finding and understanding of the customs officials, as is urged by counsel, still the petitioners would not be entitled to enter the Islands for the reason that such industrial partners are not merchants as that term is used in section 3 of the Immigration Act of February 5, 1917, *supra*.

While it is true that the provisions of said section 3 quoted above exempts from geographical exclusion a merchant, it contains no definition of the term "merchant." The definition of the term "merchant," as given in section 2 of the Act of November 3, 1893 (28 Stat. 7), is not necessarily applicable, for that Act is designated by its own title as an amendment of the Act of May 5, 1892, which is entitled "An Act to prohibit the coming of Chinese persons into the United States." Looking to the United States we find that on September 14, 1920, the Department of Labor sent out the following:

"To all Commissioners of Immigration and Inspectors in Charge:

This letter will advise officials of the Immigration Service that the Department has defined a merchant, for the purpose of enforcement of the geographical clause of Section 3, as follows:

'A merchant is a person engaged, in good faith, in buying and selling merchandise, at a fixed place of business, which business is conducted in his name and under his own supervision, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as a merchant.'

* * * * *

For the Commissioner General,
W. J. PETERS,
Special Immigration Inspector."

Turning to the Philippines, we find that the local Legislature of the Islands has defined the term "merchant" for at least two purposes. Act No. 702 (2 Public Laws 363), is entitled "An Act to regulate the registration of Chinese persons in the Philippine Archipelago, and to carry into effect and enforce" certain provisions of the Act of Congress of April 29, 1902. The second paragraph of section 12 thereof reads as follows:

"The term 'merchant' as employed in this Act signifies a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant. The definition of 'laborer' and 'merchant' set out in this section shall receive the same construction as that given to it by the Federal courts of the United States and the rulings and regulations of the Treasury Department of the United States."

A "merchant," for purposes of internal revenue, "means a person engaged in the sale, barter, or exchange of personal property of whatever character" (Section 1459, Administrative Code, 1917).

Article 1 of the Code of Commerce provides that:

> "The following are merchants for the purposes of this Code: (1) Those who, having legal capacity to trade, customarily devote themselves thereto. (2) Commercial or industrial associations which are formed in accordance with this Code."

While Article 4 of the Code of Commerce provides, as one of the conditions of legal capacity to engage in commerce, that the person must have reached the age of twenty-one years, Article 15 permits foreigners to engage in commerce in the Islands subject to the laws of their own country in so far as their capacity to transact business is concerned. Article 17 provides that registration in the mercantile registry "shall be optional for private merchants and compulsory for associations established in accordance with this Code * * *." Article 125 sets out the essential requisites which the articles of a general co-partnership must contain. Under Article 138 a legally formed commercial co-partnership may consist of both capitalist and industrial partners.

All agree that the Insular authorities should adopt a definition, as a standard for testing the claim of a native to enter the Islands as a merchant under the exception in the geographical excluding provisions of the Act, which will effectuate the purpose of the statute. That the precise end sought was to exclude, by racial discrimination, labor which would be inimical to the labor interest of the United States and the Insular possessions there can be no doubt. To overcome the difficulty experienced in the administration of the Chinese Exclusion Laws prior to the Act of 1893, *supra*, this Act made it possible for a Chinese person to come

within the term "merchant" only in a *bona fide* way. Section 2 thereof declares that the term "merchant" shall have the meaning therein set forth and none other.

Section 1 of the Act under consideration provides "That this Act shall be enforced in the Philippine Islands by officers of the general government thereof, * * *." Under section 23 those officers are authorized to formulate or adopt such a definition of the term "merchant" as they may deem effective to carry out the intent of Congress. An industrial partner of an ordinary, general mercantile co-partnership created under the Commercial Code in force in the Philippine Islands, is one who contributes his industry only to the concern, and not property. Counsel says that industrial partners are those "who furnish no capital but lend their skill, their time, their experience and their services to the joint undertaking" (Brief 25). While our definition is both inclusive and exclusive, the scope and meaning of the term "industry" is sufficiently delimited for all purposes in so far as the relations among the partners themselves and their dealings with third parties are concerned, but not where, as in the instant cases, the general welfare of the whole people is involved, for the basis of the inquiry then shifts materially, and the fundamental question is: Does this definition meet the requirements of the Immigration Act? The customs authorities, let us say, answered the question in the negative and evidently adopted the definition given in section 12 of Act No. 702, *supra*, or one substantially the same as that. In so doing no error was committed, for the definition of the term "industrial partner" is by far too elusive and difficult of application in the administration of the "Asiatic Exclusion Law," as we shall attempt to show.

A native from the barred zone must pass two tests before he can enter the Philippine Islands. The first is largely

one of personal qualification, imposed for the purpose of protecting the health and morals of the people of the country. The second is one of vocational classification which involves the possession of certain social attributes. Only those "natives" who are placed in the excepted classes by the Act can pass this second test. It was said in Lee Can *v.* United States, 62 Fed. Rep. 914, 917, in respect of the definition of the term "merchant" set forth in section 2 of the Act amending the Act of May 5, 1892, *supra*, that "It is incontestable that it (the amendment) was not directed at merchants any more than prior legislation was, or that it was not intended to regulate their methods of business, except so far as necessary to prevent evasions of the Act. It was directed at laborers,—to prevent them from assuming a false character." The same may be said of the Asiatic Exclusion Law under consideration. It is the duty of the Insular authorities to prevent the "natives" from the barred zone from assuming a false character for the purpose of entering the Islands.

As was said in Westcott *v.* Gilman, 170 Cal. 562, 150 Pac. 777, that a division of the profits amongst employees is not an unusual thing in modern business. "The employees receive a fixed compensation by way of wages or salary, and in addition thereto and as an inducement to more efficient service, are given a certain percentage of the net profits at stated intervals. This, of course, does not create a partnership. * * *. But while thus the element of profit sharing does not alone and of itself establish a partnership, it is an essential element of every partnership, * * *." We do not say that a partnership cannot be created in this country by two or more persons uniting in business, one contributing money and the other labor, the profits being divided between them.

We have not been able to find an authoritative statement touching the history and origin of "industrial partners," as

that term is used in the Spanish Code of Commerce, but the Court states in Compania Maritima *v.* Munoz et al., 9 Phil. Rep. 326, 337, that

> "In fact, in his (Estasen) former treaties, * * * we find nothing which recognizes the existence of these irregular general partnerships, or the exemption from liability to third persons of the industrial partners. He says in his latter works (p. 186) that according to Dr. Benito the irregular general partner originated from the desire of the partnership to associate with itself some old clerk or employee as a reward for his services and the interest which he had shown in the affairs of the partnership, giving him in place of a fixed salary a proportionate part of the profits in the business."

While a bare majority of the court held in Compania Maritima *v.* Munoz et al., *supra,* that industrial partners are liable to third parties for the debts and obligations of the partnership, attention is invited to the strong dissenting opinion of the Chief Justice upon this point wherein he states that during almost half a century no objection has been raised by the professors of law, the press or the bar to the doctrine regarding the exemption of industrial partners.

An industrial partner is, as we have stated, one who contributes his industry only to the concern. He may contribute his labor, time, skill, experience and his services, all at one and the same time; or he may contribute his manual labor only, skilled or unskilled, then he would fall clearly within the term "laborer" although he might be at the same time an industrial partner. The outstanding and distinguishing characteristic between a capitalist partner and an industrial partner is that the latter has no interest in the profits as property, but receives a proportion of the same as a compensation for his services; while the former has a partnership in the business, and not merely a right to share the

profits. In Tom Hong *v.* United States, 193 U. S. 517, 522, the court said:

> "The purpose of the law (the Act of May, 1892, as amended Nov. 3, 1893) is to prevent those who have no real interest in the business from making fraudulent claims to the benefits of the Act as merchants. The interest in the business must be substantial and real and in the name of the person claiming to own it, but the partner's name need not necessarily appear in the firm style when carried on, as is usual among the Chinese, under a company name, which does not include individual names. The main purpose is to require the person to be a *bona fide* merchant, having in his own name and right an interest in a real mercantile business, in which he does only the manual labor necessary to the conduct thereof."

These principles are perfectly applicable to natives from the barred zone who are seeking to enter the Islands on the ground that they are merchants, and especially to the petitioners in the case at bar. The petitioners are given no power as partners in the firm of Wassiamall Assomall and Co. by the so-called partnership agreement, for it is clearly stated in paragraph 3 thereof (Rec. 15) that the "direction, control and management of this partnership is vested solely and exclusively" in the capitalist partners with power to appoint such manager or managers from the industrial partners as they may deem necessary. Hence, the petitioners have no real interest in the firm. They are to receive a proportion of the profits in lieu of salaries for their services. They are at most mere employees or would be employees of the firm. They have no voice in the management of the business. They are to obey orders and to do the kind of work or manual labor which they are directed to do by the capitalist partners. They can never become merchants in any real sense under this contract. They have no rights thereunder which they could enforce except payment for their labor or services in the form of a part of the profits.

As the record fails to affirmatively show that the "Articles of Agreement" have been recorded in the commercial registry the *firm itself is not a merchant* and cannot therefore sue or be sued in its firm name. 5 Ops. Atty. Gen'l. of the P. I. 385, and authorities cited therein.

The right of these petitioners to enter the Philippine Islands is to be determined as of the time they presented themselves at the port of Manila for entry. If they were then only would be merchants they cannot be permitted to enter for the purpose of becoming in fact merchants. This is clear.

Power of this Court to review the judgment or decree under consideration

Section 27 of the Act of August 29, 1916 (39 Stat. 555) provides that the Supreme Court of the United States shall have jurisdiction to review the final judgments and decrees of the Insular Supreme Court in all cases in which the Constitution or any statute or treaty of the United States is involved. The review must be on a writ of certiorari and is limited to cases "which would be subject to review under existing law" (Section 5 of the Act of Sept. 6, 1916; 39 Stat. 727).

If the Immigration Act of February 5, 1917, *supra*, is really and substantially involved in this case, it must be so solely because the construction placed upon the Act by the court below, to the effect that the section-six certificate is the sole evidence permissible to establish the petitioners' right to enter the Islands, defeated the right set up by the petitioners; whereas an opposite construction would have sustained that right. Such a construction could not have defeated the right of the petitioners to enter the Islands for the reason that they had no such right under any kind of proof which they could offer.

We merely call attention to this point but do not press it as a decision on the merits is greatly desired by the Insular officers to guide them in the administration of the Asiatic Exclusion Law.

The judgment of the Insular Supreme Court reversing the judgment of the Court of First Instance and affirming the action of the customs authorities should be affirmed.

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Of Counsel:
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Major, Judge Advocate.

DHA[illegible]ANDAS TULSIDAS ET AL. *v.* INSULAR COLLECTOR OF CUSTOMS.

CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 77. Submitted May 2, 1923.—Decided May 21, 1923.

1. A decision of the duly constituted immigration authorities holding an applicant not of a status entitling him to admission, should not be rejected in *habeas corpus* unless resulting from manifest abuse of power and discretion. P. 263.
2. The right of an alien applicant to be admitted, under the Immigration Act of 1917, as a merchant, does not depend on his pre-

senting a certificate of his status, issued under § 6 of the Act of May 6, 1882, c. 126, 22 Stat. 58, 60, as amended by § 6 of the Act of July 5, 1884, c. 220, 23 Stat. 115, 116. P. 263.

3. To be admissible as a merchant, under the Immigration Act of 1917, an alien must be actually a merchant,—an owner of a business,—not merely a salesman, manager or other employee; and his status as merchant must exist at the time of his application for admission. P. 264.

Affirmed.

CERTIORARI to a judgment of the Supreme Court of the Philippine Islands, which discharged a writ of *habeas corpus* sued out by the petitioners in a court of first instance, to test the legality of their detention, by the respondent, as inadmissible aliens.

Mr. Adam C. Carson, Mr. Hartford Beaumont and *Mr. W. Davis Conrad* for petitioners.

Mr. Grant T. Trent, Mr. Logan N. Rock and *Mr. F. G. Munson* for respondent.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Petition in *habeas corpus* in which petitioners pray to be delivered from the custody of the Insular Collector of Customs, by whom they aver that they are detained for deportation from Manila, at which place they are entitled to land and remain under the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, being merchants.[1]

[1] "That the following classes of aliens shall be excluded from admission into the United States: . . . unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, . . . or who are natives of any country, province, or dependency situate on the Continent of Asia . . . , and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provisions next foregoing, however, shall not apply to persons of the following status or

Petitioners arrived at Manila, September 26, 1919, and were taken before a Board of Special Inquiry formed by the Insular Collector of Customs, constituted of three officers of the Bureau of Customs, duly designated and qualified to serve on such Board at the port of Manila in accordance with law, to determine whether petitioners should be allowed to land, or should be deported.

The right of petitioners to land was considered by the Board separately and decided separately, but for convenience we have considered their applications and the proceedings thereon as joint, and, therefore, it is only necessary, in representation of the applications and the proceedings, to say that the Board after consideration of the applications and the testimony given in support thereof, decided as to Tulsidas that it appeared that he had no business in India, and none in the Philippines, that his passport showed that he was only a salesman, and that it was clear that he was "not a merchant within the meaning of the Immigration Law, and, therefore, not an exempt and entitled to landing." He was refused landing.

The Board also refused landing to Lekhraj and Sukhrani, deciding that they were salesmen, not industrial partners as they claimed to be, of Wassiamall Assomall & Co., but salesmen in that store. The Board further decided that they had no business of their own and that industrial partners were not merchants within the meaning of the Immigration Law.

From the decisions of the Board, petitioners prosecuted appeals to the Insular Collector of Customs and it appearing to him, as he said, that the decisions of the

occupations: . . . merchants, . . . , but such persons . . . who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act." [§ 3.]

Board were "reasonable and proper" in that petitioners being natives of India, failed to show that they belonged to any exempted classes under the provisions of § 3 of the Immigration Act of February 5, 1917, he refused them landing, and ordered that they be "returned to their port of embarkation in accordance with law."

It will be observed, therefore, that the officers on whom was imposed the duty of administering the Immigration Law and passing upon the right of an alien applicant to admission into the United States, decided that the petitioners were of the class excluded from admission, and refused them landing.

In question of the legality of that ruling, proceedings were instituted in the Court of First Instance by a petition for *habeas corpus*. To the petition, the Attorney General of the Islands, as representative of the Insular Collector of Customs, and in his official capacity, opposed the decision rendered by the Board of Special Inquiry and the Insular Collector of Customs, and denied the allegations of the petition "except as same may be admitted in, or appear to be true from, the proceedings of the immigration officials in this case."

The Court of First Instance reversed the rulings of the immigration officials and "definitely ordered that the petitioners be placed at liberty."

The court assigned especial probative force to the partnership agreement introduced in the case, "the genuineness of which" the court said was not questioned, according to which the court further said, "the petitioners were admitted as industrial partners of said partnership, the first having a right to fifteen per cent of the profits, the second ten per cent, and the third five per cent." And the court was of the view that "industrial partners" were as much merchants as "capitalist partners."

The Supreme Court of the Philippine Islands to which the case was appealed, revoked the granting of the writ

of *habeas corpus*, and ordered and decreed that the judgment of the Department of Customs ordering deportation of petitioners be affirmed.

The court based its decision on two grounds: (1) Granting that appellees (petitioners) are merchants, they did not present as proof of the fact the certificate issued under § 6 of the Act of Congress of May 6, 1882, c. 126, 22 Stat. 58, 60, as amended by § 6 of the Act of July 5, 1884, c. 220, 23 Stat. 115, 116, which, it is provided, shall be the sole evidence permissible to establish the exemption of an alien from the prohibition of the Immigration Law. (2) The court considered that, independently of the requirement, appellees (petitioners) had failed to show that they were merchants in the country from which they had come, and that was necessary because the law did "not contemplate that aliens who claim to belong to an exempted class, or aliens otherwise prohibited from entering the United States, shall be permitted to enter the territory of the United States to become merchants." And the court construed the partnership agreement as creating a condition or status after landing in Manila,[1] and concluded that, "There is absolutely nothing in the record which shows that the depart-

[1] The partnership agreement recites that it is made the "nineteenth day of September" 1919, between certain parties who are named "to be known as the capitalist partners, parties of the first part" and the petitioners and other parties, "to be known as industrial partners, parties of the second part,

"Witnesseth: That said parties have agreed, and by these presents do agree, to associate themselves as co-partners for the purpose of carrying on the business of buying and selling goods, wares, merchandise and commodities and such commission business as may appertain to the same, in the Philippine Islands to the faithful performance of which they mutually bind and engage themselves each to the other, his executors and administrators:

"1. That the principal place of business and domicile of this co-partnership shall be Manila; or at such other place as the business

ment of customs abused its power, authority or discretion in the slightest degree."

The conclusion has pertinent signification, for counsel admit that "under the express provisions of the statute, the decision of a Board of Special Inquiry, such as that now under consideration, is final, when affirmed on administrative appeal", and only to be reviewed upon *habeas corpus* when the administrative officers have manifestly abused the power and discretion conferred upon them.

It would seem, therefore, as if something more is necessary to justify review than the basis of a dispute. The law is in administration of a policy which, while it confers a privilege, is concerned to preserve it from abuse and, therefore, has appointed officers to determine the conditions of it, and speedily determine them, and on practical considerations, not to subject them to litigious controversies, and disputable, if not finical, distinctions. Keeping in mind the admonition of this, we pass to the consideration of the rulings of the officials and the courts.

In the ruling of the Supreme Court that a "Section-Six certificate," as the court and counsel call it, is the prescribed evidence for admission under the Immigration Law, we do not concur, but in the ruling of the court that an applicant for admission as a merchant must be such at the time of his application, we do concur.

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now conducted at said location may hereinafter be transferred by mutual consent, and this contract shall relate to this particular store and business only.

"2. That the business of this co-partnership shall be conducted under the firm name of 'Wassiamall Assomall & Co.'

"3. That the direction, control and management of this partnership is vested solely and exclusively in the parties of the first part, who are hereby granted full power and authority to appoint such manager or managers from the industrial partners as they may deem necessary or proper for the management of the store above mentioned."

The law defines the classes of aliens which shall be excluded from admission to the United States, but provides that the exclusion shall not apply to persons having the "status or occupations" of "merchants." This means, necessarily, having the "status" at the time admission is sought, not a status to come, or to be established. If the latter, what indulgence of time is to be given for its attainment, and how is detriment to the policy of the law while the status is attaining to be prevented, and how terminate the indulgence and the detriment, and execute the law? There can be no answer to those questions consistent with the denial that the status of merchant must exist at the time of application for admission.

The petitioners testified, and upon considering the testimony, we encounter some anomalies—anomalies that strain belief in its truth—certainly repel from acceptance, pretensions which are based upon the confusion of established distinctions between occupations. We have seen, the assertion is that petitioners are industrial partners, and as such Lekhraj testified he was absent from Manila over three years but was an industrial partner in the store of Wassiamall Assomall & Co., during that time—he "only took a rest." Sukhrani put his absence at sixteen months. At the time of his testimony, he said he was "a salesman" but was to become manager.

May we not wonder, in some disbelief, how a salesman or manager, whether his compensation be a salary or a percentage of profits, could have been indulged in absences of such duration?

The confounding of occupations—that of salesman or manager with that of merchant—cannot be accepted. A merchant is the owner of the business; a salesman or manager, a servant of it; and especially so under the Immigration Law. The policy of the law must be kept in mind. It is careful to distinguish between the status of a mer-

chant and those below that status. A merchant is fixed in it and made constant to it by his financial interest, a salesman or manager is but an employee, however else he may be denominated, and may withdraw from his employment at any moment of time and become a competitor in the ranks of labor, using the word in the sense the law implies. So particular is the law in regard to its distinctions and policy that if a merchant descends from his status he shall be "deemed to be in the United States contrary to law, and shall be subject to deportation." And induced, no doubt, by such consideration as well as the distinction in occupations, the Insular officials adjudged that petitioners were not merchants, so adjudged from their knowledge of the conditions obtaining in the Philippines, so adjudged from contact with petitioners, and in estimate of their pretensions. And, necessarily, we should not view the spoken word, nor even the partnership agreement produced in support of the spoken word, separate from that contact and that estimate. And in accepting the adjudication, we do not share the alarm of counsel that it will result in admitting only petty tradesmen, in excluding "the managing partners and directors of great mercantile enterprises. We think rather it will leave the administration of the law where the law intends it should be left; to the attention of officers made alert to attempts at evasion of it and instructed by experience of the fabrications which will be made to accomplish evasion.

Counsel themselves seem conscious of the exaggeration which made managers and industrial partners of petitioners in a great enterprise, made especially such of a boy nineteen years of age. As to him (Tulsidas), counsel say, though asserting his right to admission, that "there is substantial ground for a contention" that "the writ [*habeas corpus*] should not issue because of the lack of sufficient affirmative evidence in the record in support

of his claim that he is a merchant, and as such entitled to admission to American territory." And further, "as a newcomer to the islands, something more than his own uncorroborated statements as to his status in the country from which he came might fairly and reasonably have been required of him."

We concur with counsel as to Tulsidas and extend the requirement to the other petitioners and hold that instead, as counsel urge, of the Insular officers being obliged to seek confirmation or denial of petitioners' testimony, they, the petitioners, should have produced something more than their own statements of their status as merchants. It was for them to establish their exemption from the prohibition of the law, for them to satisfy the Insular officials charged with the administration of the law. If they left their exemption in doubt and dispute, they cannot complain of a decision against it.

Judgment affirmed.

STEVENS *v.* ARNOLD ET AL., EXECUTORS AND